

IN THE CIRCUIT COURT OF  
THE 11TH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,  
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO  
COMPANY, et al.,

Defendants.

\_\_\_\_\_ /

Miami-Dade County Courthouse  
Miami, Florida  
Monday, 1:30 p.m.  
April 5, 1999

TRIAL - VOLUME 273

The above-styled cause came on for trial  
before the Honorable Robert Paul Kaye, Circuit Judge,  
pursuant to notice.

APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.  
 SUSAN ROSENBLATT, ESQ.  
 CLIFFORD DOUGLAS, ESQ.  
 On behalf of Plaintiffs

DECHERT PRICE & RHOADS  
 ROBERT C. HEIM, ESQ.  
 SEAN P. WAJERT, ESQ.  
 On behalf of Defendant Philip Morris

COLL DAVIDSON CARTER SMITH SALTER & BARKETT  
 NORMAN A. COLL, ESQ.  
 On behalf of Defendant Philip Morris

ZACK KOSNITZKY  
 STEPHEN N. ZACK, ESQ.  
 On behalf of Defendant Philip Morris

CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER  
 R. BENJAMINE REID, ESQ.  
 DOUGLAS CHUMBLEY, ESQ.  
 On behalf of Defendant R.J. Reynolds

JONES, DAY, REAVIS & POGUE  
 RICHARD M. KIRBY, ESQ.  
 DIANE PULLEY, ESQ.  
 On behalf of Defendant R.J. Reynolds

KING & SPALDING  
 MICHAEL RUSS, ESQ.  
 RICHARD A. SCHNEIDER, ESQ.  
 On behalf of Defendant Brown & Williamson

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY  
 KELLY ANNE LUTHER, ESQ.  
 On behalf of Defendants Liggett Group  
 and Brooke Group

SHOOK HARDY & BACON  
 EDWARD A. MOSS, ESQ.  
 WILLIAM P. GERAGHTY, ESQ.  
 On behalf of Defendant Brown & Williamson  
 JAMES T. NEWSOM, ESQ.  
 On behalf of Defendant Lorillard

## APPEARANCES (Continued)

DEBEVOISE &amp; PLIMPTON

ANNE COHEN, ESQ.

JOSEPH R. MOODHE, ESQ.

On behalf of Defendant The Council for Tobacco

Research

GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN &amp; QUENTEL

DAVID L. ROSS, ESQ.

On behalf of Defendant Lorillard

MARTINEZ &amp; GUTIERREZ

JOSE MARTINEZ, ESQ.

On behalf of Defendant Dosal Tobacco Corp.  
and Tobacco Institute

KASOWITZ BENSON TORRES &amp; FRIEDMAN

AARON MARKS, ESQ.

NANCY STRAUB, ESQ.

On behalf of Defendants Liggett Group  
and Brooke Group

29984

I N D E X

| WITNESS                                | PAGE  |
|--|-------|
| ROBERT P. DERHAGOPIAN, M.D.            |       |
| Cross by Mr. Rosenblatt (Cont'd) ..... | 29985 |
| Redirect by Mr. Reid .....             | 30044 |
| RICHARD D. THOMAS, PH.D                |       |
| Direct by Mr. Reid .....               | 30070 |

E X H I B I T S

| PLAINTIFFS' | OFFERED | ADMITTED | FOR ID |
|-------------|---------|----------|--------|
| EXHIBITS    | PAGE    | PAGE     | PAGE   |
| None.       |         |          |        |

E X H I B I T S

| DEFENDANTS' | OFFERED | ADMITTED | FOR ID |
|-------------|---------|----------|--------|
| EXHIBITS    | PAGE    | PAGE     | PAGE   |
| None.       |         |          |        |

29985

1 (Whereupon, the following proceedings were had:)

2 THE COURT: Okay. Let's finish up. Let's  
3 get the jury out here, get the witness here.

4 (The jurors entered the courtroom.)

5 THE COURT: Okay. Have a seat, everybody.  
6 Let's resume. We're on cross.

7 CROSS-EXAMINATION (Cont'd)

8 BY MR. ROSENBLATT:

9 Q. Doctor, you had said earlier you would  
agree  
10 that approximately 90 percent of men and women who  
11 suffer from lung cancer are smokers?

12 A. That's correct.

13 Q. And that's actually, that's the figure  
found  
14 commonly given in the literature, and you've also  
15 that to be consistent with your own practice?

16 A. Well, I hadn't really counted my practice  
up  
17 directly. But it's such a high percentage of  
patients,

18 I'd say that probably is close to the truth.

19 Q. I'm going to read a passage from the  
Surgeon

20 General's Report of 1982. The general title is: The  
21 Health Consequences of Smoking. And the focus of the  
22 1982 Surgeon General's Report is on cancer. Not only  
23 lung cancer, but cancer generally.

24 And on Page 6 this statement appears.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

29986

1 MR. ROSENBLATT: I don't.

2 BY MR. ROSENBLATT:

3 Q. Since the early 1950s, lung cancer has been  
4 the leading cause of cancer death among males in the  
5 United States. Among females, the lung cancer death  
6 rate is accelerating and will likely surpass that of  
7 breast cancer in the 1980s.

8 Now that prediction has come true, hasn't  
it?

9 A. I think the incidence of lung cancer rose  
in  
10 women, and then it's starting to fall down again. I  
11 think the number of breast cancer deaths are still a  
12 little bit less than lung cancer deaths in women.

But  
13 I don't know the exact figures in women.

14 Q. And I take it you would disagree with the  
15 statement of the Surgeon General in 1982 when he uses  
16 the word "cause" in this sentence: Since the early  
17 1950s, lung cancer has been the leading cause of  
cancer  
18 death among males in the United States.

19 Is that a statement you agree with or  
20 disagree with?

21 A. That's true.

22 Q. You agree?  
23 A. Yes, lung cancer deaths are the number one  
24 cause of any cancer, the number one cause of cancer  
25 deaths.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

29987

1 Q. And also in the 1982 Surgeon General's  
2 Report, talking specifically about lung cancer, the  
3 statement appears on Page 5: Cigarette smoking is  
the  
4 major cause of lung cancer in the United States.

5 Agree or disagree?

6 A. I agree with that in the generic sense  
again.

7 Q. Okay. You would agree that the New England  
8 Journal of Medicine is one of the, if not the, most  
9 prestigious medical journals in the world?

10 A. It's a very good journal.

11 Q. Okay. Referring specifically to an article  
12 that appeared in the journal March 31, 1994, this  
13 statement appears.

14 MR. REID: Excuse me, Your Honor. I object  
15 until the proper foundation of that article has been  
16 laid, there's been no attempt at this point. He  
hasn't

17 even told him what the article is.

18 MR. ROSENBLATT: Okay. The title of the  
19 article is --

sidebar? 20 MR. REID: Your Honor, could we come

21 (The following proceedings were had at

22 sidebar:)

23 THE COURT: What's your problem?

24 MR. REID: I just need to see, there are

25 of these articles that have terrible titles and they

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

29988

1 shouldn't be read to the jury.

2 And what part are you going to read? The

3 part that's highlighted?

4 MR. ROSENBLATT: Let me see. Initially I'm

5 going to read what's yellowed on Page 911.

6 MR. REID: I think that what he needs to

do,

7 Your Honor, for all these articles, the way the rules

8 require, show the article, ask him if he knows the

9 article, title, does he consider the article

10 authoritative if he knows about it. There's a simple

11 way to do it, and counsel does it a lot of different

12 ways and we always have to come up here.

13 MR. ROSENBLATT: No. I think the simple

way

14 to do it is I think we've been here long enough to

know

15 that the New England Journal is a peer-reviewed --

16 their own witness testified that only 7 percent of

the



17 submissions are published.  
18 And again, when we're dealing with  
textbooks,  
19 when we're dealing with the New England Journal of  
20 Medicine, we should not be in the position of having  
a  
21 savvy witness: Well, I don't consider it  
22 authoritative.  
23 MR. REID: Your Honor, that's what the rule  
24 requires. The rule requires that the witness accept  
it  
25 as authoritative. Failing that, counsel can try to  
put

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

29989

1 in extraneous evidence to try to prove it. Just  
2 because it's in the journal does not mean that the  
3 witness knows it --  
4 THE COURT: The interest is whether or not  
5 this is a true statement or he agrees with the  
6 statement.  
7 MR. REID: He asked him the same question  
8 because it was in the Surgeon General Report. So  
it's  
9 repetitive.  
10 MR. ROSENBLATT: It's not repetitive at  
all,  
11 because he gave a totally incorrect answer. He said  
he  
12 didn't think that lung cancer had surpassed breast

13 cancer, and it clearly has.

14 MR. REID: But then he said lung cancer had  
15 fallen off in recent years.

16 THE COURT: Let's crawl before we walk to  
see  
17 if he recognizes it. Then we can get to that.

18 MR. ROSENBLATT: Ask him if he --

19 THE COURT: Ask him if he's familiar with  
it,

20 and if he says no --

21 MR. ROSENBLATT: Then we're back here.

22 THE COURT: If he says no, you can simply  
ask  
23 him if he agrees with the statement.

24 MR. REID: Well, I'd object to that.

25 THE COURT: He can agree or disagree with  
any

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

29990

1 statement.

2 (The sidebar conference was concluded, and  
3 the following proceedings were held in open court:)

4 BY MR. ROSENBLATT:

5 Q. Doctor, I want to show you a copy of a  
6 special article which was a two-part article. This  
is

7 the first of two parts, by three medical doctors,  
which

8 appeared in the New England Journal of Medicine March

9 31, 1994.

10 Why don't you take the time to glance at  
it,

11 and then I'm going to ask you if you're familiar with  
12 that article.

13 A. I'm not familiar with the article.

14 Do you want me to read the article?

15 Q. I want you to glance at it.

16 A. I don't know how to -- I mean, I really  
don't  
17 know how to glance at an article.

18 Q. Look at what I've got yellowed, because  
19 that's what I'm going to ask you about.

20 A. All right.

21 MR. REID: Your Honor, I don't think he's  
22 laid the proper foundation that you required.

23 BY MR. ROSENBLATT:

24 Q. Do you recognize -- are you familiar with  
any  
25 of these three medical doctors?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

29991

1 A. No, I'm not.

2 Q. You don't know the names?

3 A. I don't know the names.

4 Q. You can see from the attribution that  
they're  
5 from the Department of Medicine, University of  
Colorado

6 School of Medicine?

7 A. Correct. I can see that.

about

8 Q. Look at Page 911. I'm going to ask you

9 that.

10 Would you consider this to be an  
11 authoritative article, since it obviously passed peer  
12 review in the New England Journal of Medicine, which  
13 you acknowledge to be a very prestigious medical  
14 journal?

review

15 A. I think the New England Journal publishes  
16 very good articles and usually if it passes peer

authoritative

17 to get in there, it's considered to be an

18 type of article.

19 Q. And you so consider it?

20 A. Yes.

21 Q. Okay.

22 A. Now, I've not read the article and I've not  
23 read the references that the article cites. I think  
24 every doctor has the opportunity to read an article

and

25 make his own determination.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

29992

1 Q. There's been testimony in this case, as a  
2 matter of fact from a defense witness, that the New  
3 England --

4 MR. REID: Your Honor --

5 THE COURT: Hold on. No. I don't want to

6 get into that. If you're going to get into this  
thing

7 at this point, get into it.

8 BY MR. ROSENBLATT:

9 Q. Do you agree or disagree with this  
statement

10 which appears on Page 911: Lung cancer, which caused

11 an estimated 56,000 deaths in 1993, has surpassed

12 breast cancer, which caused an estimated 46,000  
deaths,

13 as the most important cause of death from cancer  
among

14 women?

15 A. That may be so in 1993. But I think breast

16 cancer deaths outnumber lung cancer deaths in women

17 now.

18 Q. Can you cite me to any literature that says

19 that?

20 A. I think the recent American Cancer Society

21 tables supports that. It's just my recollection of  
it.

22 I think the death rate in women have actually fallen

23 down in terms of lung cancer. At this point in time

24 this article was written, there seemed to be a rise,

25 but I think it's now tapered off. But I won't  
quibble

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

due  
1 with you with the fact that there's a lot of deaths  
2 to lung cancer in women.

3 Q. But you don't accept the proposition that  
4 today more cancer deaths are caused among women as a  
5 result of lung cancer than breast cancer; you have  
some  
6 doubt about that?

7 A. Yes, I think breast cancer deaths are  
higher  
8 than lung cancer deaths in women right now.

9 Q. If so, not by much?

10 A. I don't know what the exact numbers are,  
but  
11 probably not by much.

12 Q. Go to the first page of this article. The  
13 heading is, The Human Costs of Tobacco Use. In the  
14 second paragraph, beginning "in 1990":

15 In 1990 in the United States, smoking-  
related  
16 illnesses accounted for nearly 1 in 5 deaths and more  
17 than one-quarter of all deaths among those 35 to 64  
18 years of age. A breakdown of the deaths due to  
various  
19 diseases attributable to cigarette smoking is shown  
in  
20 table two. Peto et al. have estimated that during  
the  
21 1990s in developed countries, tobacco will cause --  
22 will cause approximately 30 percent of all deaths  
among  
23 those 35 to 69 years of age, making it the largest  
24 single cause of premature death in the developed  
world.

25 Agree or disagree?

29994

1 A. Well, that's what the statement says.

2 Q. Do you agree or disagree -- I'm not asking  
3 you if you agree that I read it correctly. I'm  
4 asking  
5 you if you agree with the substance of it?

6 A. I can comment -- my expertise is not really  
7 in terms of what tobacco has been associated with.  
8 I'm  
9 talking today about lung cancer, foregut cancers,  
10 this  
11 seems to be all encompassing.

12 Looking at that table, it talks about other  
13 deaths due to these agents, which I interpret to be  
14 it  
15 automobile accidents, you know -- I don't know what  
16 means tobacco-related deaths, whether that implies  
17 heart disease, high blood pressure, et cetera. My  
18 expertise and what I'm commenting on today is  
19 basically

20 cancer. This talks about deaths due to tobacco,  
21 which  
22 can include a lot of diseases, I would presume.

23 Q. You'll note that the three authors of this  
24 article in this paragraph are not at all reluctant to  
25 use the word "cause," that tobacco causes these  
26 deaths?

27 A. You know, as I said, I've used the same  
28 terminology many times myself.

29 Q. But you've never used it in an article that

23 you've submitted for publication, have you?  
24 A. I've never submitted an article on this  
25 particular topic.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

29995

1 Q. You've never submitted an article on the  
2 subject of the relationship between cigarette smoking  
3 and lung cancer or any other kind of cancer, correct?

4 A. Correct.

5 Q. Doctor, the 1989 Surgeon General's Report -

6 you will agree, obviously, that if you look at the  
7 various -- you know who appoints a Surgeon General?

8 A. I think the President does.

9 Q. Right. The President. And the Surgeon  
10 General requires confirmation of the United States  
11 Senate, correct?

12 A. Correct.

13 Q. To your knowledge, has anyone ever turned  
14 down the job? Been offered by the President of the  
15 United States, hey, I want you to be Surgeon General,  
16 and the man or the woman says, no, I'm not  
interested?

17 A. I don't know.

18 Q. Probably not, though. Doesn't your common  
19 sense tell you it's such a prestigious offer, that  
20 probably no one has ever refused it?



21           A.    I just don't know.  
22           Q.    Okay.  You will agree that from 1964 up  
until  
23   today there have been Republican presidents,  
Democratic  
24   presidents, liberal, conservative, but on the issue  
of  
25   cigarette smoking causing disease, the Surgeon  
Generals

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

29996

1    have been totally consistent?  
2           A.    They have.  They've --  
3           Q.    And regardless, I'm sure you'll agree with  
4   this:  Regardless of the political persuasion of the  
5   President, any Surgeon General worth his salt, man or  
6   woman, will recognize that their chief obligation is  
to  
7   the American people?  
8           A.    I agree.  
9           Q.    The 1989 Surgeon General's Report, among  
the  
10   major conclusions, this is on Page 11, one sentence,  
11   and I ask you if you agree or disagree.  This is ten  
12   years ago:  
13                   Smoking is responsible for more than one of  
14   every six deaths in the United States.  Smoking  
remains  
15   the single most important preventible cause of death  
in  
16   our society.

17 Do you agree or disagree?

18 A. You know, here again, I don't have the  
19 background to be able to comment on that. My  
testimony  
20 today has to do with foregut cancers. And I will  
agree  
21 with you whole heartedly that tobacco use is  
associated  
22 with a higher risk for cancer of the foregut. In  
terms  
23 of those other statistics and other disease  
categories,  
24 I just -- not my cup of tea.

25 Q. Let me go backwards in time to 1973. I'm

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

29997

1 trying to think of my history. President Nixon was  
2 still President. I think he resigned in '74?

3 A. Right.

4 Q. Okay. So you look at the introduction to  
the  
5 1973 Surgeon General's Report, this is Page 67, and  
6 this specifically talks about lung cancer: Cigarette  
7 smoking has been clearly identified as the major  
cause  
8 of lung cancer in the United States. This conclusion  
9 is based on detailed epidemiological, clinical,  
autopsy  
10 and experimental data which have been -- which have  
11 accumulated over a period of more than 20 years.

12 Agree or disagree?

13 A. I think some of the parts of it I agree  
with.

14 Some of the parts of it I don't agree with. I don't  
15 think there's any laboratory model for lung cancer.

I  
16 agree with most of the epidemiological data suggest a  
17 relationship between smoking and lung cancer.

18 I don't see how autopsies can -- autopsy  
can

19 tell you you died of lung cancer, but it can't tell

20 you -- dead men don't talk. Unless you find  
cigarettes

21 inside the person, I'm not sure you can say that the

22 autopsy told us that he was a smoker. We get that  
from

23 the medical chart, from interviews, et cetera. So

part  
24 of that I agree with, part of that I don't.

25 Q. And, you know, I think you've made the  
point

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

29998

1 when you talk about the Surgeon General's Reports and  
2 the conclusions about causation reached by the

various  
3 Surgeon Generals, you seem to limit their basis for  
4 reaching those conclusions to epidemiological  
evidence.

5 But you will agree, this clearly says that the  
6 conclusion is based on not only epidemiological, but

7 clinical -- which means what you do, you have a  
8 clinical practice -- autopsy and experimental data  
9 which have accumulated over a period of more than 20  
10 years.

11 So at least in the judgment of the Surgeon  
12 General in 1973, in addition to the epidemiological  
13 evidence, there is also clinical autopsy and  
14 experimental evidence?

15 A. I commented on that already. I said that  
16 there's certainly epidemiological data that smoking  
17 related to lung cancer. I don't believe there's any  
18 laboratory experimental animal data. You can't  
19 cancer in a dog or a cat. And that animal model has  
20 not been found.

21 In terms of the autopsy data, you prove  
22 somebody died of lung cancer, that's all you can say.  
23 If he was a smoker or not, the smoking is somewhat  
24 interesting, but as I said before, a lot of smokers  
25 don't get lung cancer, you know.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

29999

1 Q. And a lot do?

2 A. Absolutely.

3 Q. And very few, very few nonsmokers get lung  
4 cancer. Some do, but when compared to the number of  
5 smokers who get lung cancer, it's 90 percent to less

6 than 10 percent?

7 A. I agree with you.

8 Q. And some of the 10 percent might have  
9 gotten -- some of the 10 percent who are nonsmokers  
10 might have gotten lung cancer as a result of their  
11 exposure to secondhand smoke for all you know?

12 A. That's a whole different issue.

13 MR. REID: Objection, Your Honor. That's  
14 irrelevant.

15 THE COURT: Overruled.

16 BY MR. ROSENBLATT:

17 Q. It's a whole different issue you prefer not  
18 to get into?

19 MR. REID: I object whether he prefers or  
20 not.

21 THE COURT: We're in a realm of speculation  
22 here. I'll sustain it on that regard.

23 BY MR. ROSENBLATT:

24 Q. The 1981 Surgeon General's Report and  
25 probably one of the most famous Surgeon Generals was

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30000

1 Surgeon General -- was appointed by President Reagan,  
2 and who would that be?

3 A. I don't know.

4 Q. Koop?

5 A. Everett Koop.

6 Q. Since Reagan was in office for eight years,  
7 Koop was in office for 8 years, right?

8 A. I didn't recall the dates of his tenure.

9 Q. On Page 79 in the 1981 Surgeon General's  
10 Report, this statement appears: Research indicates  
11 that cigarette smoking causes cancer of the lung,  
12 larynx, oral cavity and esophagus and is

significantly

13 associated with pancreas, urinary bladder and kidney  
14 cancer in both men and women.

sentence

15 Now, you will agree that in this one  
16 the Surgeon General makes a distinction between those  
17 diseases which he believes the scientific evidence  
18 justifies the conclusion that they cause cancer, and  
19 then he makes a distinction about pancreatic, urinary  
20 bladder and kidney cancer.

cancers,

21 He says it's significantly associated, when  
22 he's talking about lung cancer he says it causes lung  
23 cancer and when he's talking about these other  
24 he says there's a significant association -- at least  
25 in his mind, he makes that distinction?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30001

General,

1 A. Well, I still think he's the Surgeon

2 and I think in his mind he's trying to put across

sort

3 of a public health message. He's trying to say that  
4 the association between bladder or GU cancer and  
5 pancreatic cancer is very slight.

6 Q. He doesn't say that. He says significantly  
7 associated with pancreas, urinary bladder and kidney  
8 cancer. He just doesn't say cause. But he says  
9 significantly associated, not slightly.

10 A. I think if he really believed that those  
11 tumors had a high association, he'd probably come  
12 out and say causes them. The same way he makes the  
13 statement regarding lung cancer.

14 But I think he's the Surgeon General. His  
15 job is to protect the health of our country. And I  
16 don't disagree with his comment about warning people  
17 about the dangers of smoking. So I really have no  
18 difficulty accepting his terminology there.

19 Q. And also in '81, it's not only based on  
20 epidemiological evidence, because the Surgeon General  
21 says: This conclusion is based on epidemiologic,  
22 pathologic and experimental evidence collected over  
23 past half century.

24 A. Here again, Mr. Rosenblatt, if you can show  
25 me, tell me what the pathological -- tell me what the

right

the

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30002

you

people

mean,

Surgeon

other

1 experimental data is, I'd appreciate it. Because I  
2 don't know. If you can tell me how an autopsy of  
3 somebody who dies of lung cancer can speak and tell  
4 that the guy was a smoker. Sure, most of those  
5 who die of lung cancer were smokers, but the  
6 experimental model, the animal model I don't think  
7 exists.

8 Q. Well, you're asking me to tell you. I  
9 you were hired in this case, you were hired in this  
10 case three years ago, Doctor, and you never made it  
11 your business to read any Surgeon General's Report  
12 other than the '64 Surgeon General's Report?

13 A. No, I said I had read several of the  
14 General Reports. I didn't read them all. I told you  
15 they were boring reading.

16 Q. Well, in your deposition you said something  
17 else. Let me find it.

18 Do you remember saying on your deposition a  
19 little over a year ago that you had not read any  
20 Surgeon General's Reports?

21 A. I probably have. And subsequent to my  
22 deposition, I've asked for the other Surgeon General  
23 Reports and have been given them and have read them  
24 over.

25 Q. So, although you were hired about two years



until

1 before you gave your deposition in this case, up  
2 your deposition, you had not read any other Surgeon  
3 General's Report other than the '64. But you're  
4 telling us that since then you have?

5 A. I asked for, after that deposition, because  
6 it's not common reading and I don't keep it in my  
7 office, copies of the Surgeon General Reports. They  
8 were supplied to me, and I have perused all that was  
9 supplied. Haven't read them thoroughly.

10 Q. And, Doctor, on Page 80 of the 1981 Surgeon  
11 General's Report appears this statement: It has been  
12 established that cigarette smoking causes cancer of  
13 various organs including the lung, oral cavity,  
14 esophagus and larynx as well as exhibiting a  
15 significant association with cancer of the pancreas,  
16 bladder and kidney.

17 So, with respect to foregut cancers, this  
18 clearly says in 1981 it has been established that  
19 cigarette smoking causes cancer of these various  
20 organs.

with

21 Are you telling us you agree or disagree  
22 that?

23 A. I think I've answered this already. I said  
24 there's such a strong association between cigarette  
25 smoking and foregut cancers. I have no difficulty

30004

1 accepting the public health message that the Surgeon  
2 General is making there.

not

3 By the way, the pancreas and kidneys are  
4 part of the foregut. They're the hindgut.

5 Q. I understand that. That's why I said a  
6 strong association there, but strong association with  
7 respect to the foregut?

8 A. Here again, you're using the causation --

9 Q. I'm not using it. I'm quoting the Surgeon  
10 General of the United States in 1981 that says cause  
11 without equivocation.

as

12 A. And I said I have no difficulty with that  
13 terminology as long as it is a public health message  
14 it should be.

a

15 Q. You talk about the public health message.  
16 What's the message of your testimony here? Is it not

who's

17 fair characterization of your testimony, someone

enjoys

18 a two-pack-a-day smoker, really loves to smoke,

19 smoking, reads your testimony, would not a fair

20 assessment be, someone who is looking for a

21 rationalization to continue smoking: Well,

knows

22 Dr. DerHagopian is a board certified surgeon, he

23 a lot about cancer and he's saying he don't know that

24 cigarette smoking causes cancer. He tells everyone

to

he's

25 stop smoking, but in terms of what causes cancer,

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30005

1 been practicing medicine all these years and he don't  
2 know, so I'll keep on smoking.

3 Isn't that a fair --

4 A. I think you're mischaracterizing my  
5 testimony. I said in the very beginning, I told the  
6 jurors, I think you've got to be nuts to smoke, such

a

7 high association and risk between smoking and foregut  
8 cancers, I wouldn't smoke. Why take the chance?

9 My other point is there are a lot of people  
10 who smoke heavily and never get cancer. In fact,

most

11 people who smoke never get cancer. The jurors can  
12 understand that. And why is that so? Is it because

we

13 have defense mechanisms in our body?

14 I'm not condoning people to smoke. I don't  
15 want to send the wrong message out there to kids and

my

16 patients. They shouldn't smoke. It's dangerous.

the

17 Q. Not every heavy drinker gets cirrhosis of  
18 liver, right?

19 A. That's correct.

20 Q. But it is a well known fact that heavy

100

21 drinking over an extended period of time causes  
22 cirrhosis of the liver, but it doesn't cause it in  
23 percent of heavy drinkers?  
24 A. I think the association between heavy  
25 drinking and cirrhosis is a lot closer than heavy

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30006

to

1 smoking and lung cancer. You show me a guy who puts  
2 away a fifth of booze a day, I'll show you a guy that  
3 probably can't get up in the morning, but he's going  
4 get cirrhosis of the liver.

to

5 Q. So, in other words, in other words, I want

of

6 be sure I'm understanding this: There's a diagnosis  
7 cirrhosis of the liver. There's a history that for

15

away

8 years previous to the diagnosis the guy is putting  
9 a fifth of a vodka a day. You don't need any more

caused

10 research, you're satisfied that, hey, the booze  
11 it?

12 A. We've got good animal models regarding  
13 alcohol toxicity and cirrhosis of the liver. We know  
14 how cirrhosis of the liver is caused by alcohol in  
15 animals and man. That's good science. We don't have  
16 that with tobacco. That's the difference.

17 Q. My question was: You have cirrhosis of the  
18 liver on one hand, 15-year history of drinking, you  
19 don't have to do any more research. You accept the  
20 cause of the cirrhosis was the drinking?

21 MR. REID: Objection, Your Honor,  
22 repetitious.

23 THE COURT: It's repetitious. He's  
answered  
24 the question.

25 BY MR. ROSENBLATT:

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30007

1 Q. Is there a mechanism for cirrhosis?

2 A. Yes, there is.

3 Q. What is it?

4 A. It causes alcohol and fatty change within  
the  
5 hepatic cite, which then goes on to scarring, which  
is  
6 cirrhosis.

7 Q. How come everyone who is a heavy drinker  
8 doesn't get it?

9 A. Well, it depends how you define heavy  
10 drinker. I mentioned a guy who drinks a fifth of  
booze  
11 a day, he's going to get cirrhosis of the liver 100  
12 percent.

13 I've never done a study, but I venture to  
say

who

their

people

14 if he can stand up and continue drinking a fifth of  
15 vodka every day, he's going to get cirrhosis of the  
16 liver, he's going to get it.

17 Q. Are you telling us, Doctor, that everyone

18 goes to AA, Alcoholics Anonymous, and is cured of

19 drinking and becomes a nondrinker, all of those

20 have cirrhosis of the liver?

21 A. No. I was alluding to a guy who drinks a  
22 fifth of liquor a day.

23 Q. For how long?

24 A. 20 years you mentioned.

25 Q. I mentioned 15.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30008

liver

a

medical

1 A. 15 years.

2 Q. So some people -- there's going to be a  
3 variation, some people will get cirrhosis of the

4 in 10 years, other people it will take 15?

5 A. I don't think everybody that goes to AA was  
6 fifth a day of liquor drinker either.

7 Q. The last time you did an article on a

8 subject that was published anywhere is about 20 years  
9 ago?

somewhat

- 10           A.    I think my CV that you might have is
- 11           incomplete. I have an article that appeared in the
- 12           Florida Medical Journal a couple years ago.
- 13           Q.    But that's not a peer-reviewed journal?
- 14           A.    That's a peer-reviewed journal. You submit
- 15           an article to that journal. You can't ask that it be
- 16           published. It is reviewed by the editorial board,
- 17           many articles are not accepted. That's what
- 18           peer-reviewed means.
- 19           Q.    Doctor, in the last 20 years, how many
- 20           articles have you had published in a peer-reviewed
- 21           journal on a medical subject?
- 22           A.    I think I've just answered that question.
- 23           Q.    Just one?
- 24           A.    I think probably just one recently.
- 25           Q.    One in the last 20 years?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30009

- 1           A.    Right.
- 2           Q.    And even the few articles you did before
- 3           that, none of them were on lung cancer, were they?
- 4           A.    Correct.
- 5           Q.    Couple on breast cancer, but none on lung
- 6           cancer?
- 7           A.    Breast cancer is my area of interest.
- 8           Q.    It's fair to say, going back to how you

were

quite

it?

Honor.

appointments

9 originally contacted in this case, that you were  
10 surprised to get a call out of the blue from a lawyer  
11 you didn't know, never heard of, asking you if you  
12 would review a file. You were very surprised by that  
13 and it was very unusual in your experience, wasn't

14 MR. REID: Objection, repetitive, Your

15 THE WITNESS: Wasn't unusual at all.

16 THE COURT: The unusualness of the call?

17 MR. ROSENBLATT: Yes.

18 THE COURT: I don't think it was testified  
19 to. Overruled.

20 THE WITNESS: My secretary makes  
21 for attorneys to come and see me all the time. I do  
22 not recall ever receiving a phone call from  
23 Mr. Cesirano. He appeared in my office one day, an  
24 appointment having been made by my secretary who does  
25 that to me, presumably about a new case. That was my

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30010

1 first encounter with him.

2 BY MR. ROSENBLATT:

3 Q. Wait a second. You're telling us that your  
4 secretary -- an attorney that she never heard of and  
5 you never heard of calls, wants an appointment, she's



6 authorized to have this lawyer come in and see you  
7 before you have any idea who he is, what the case is  
8 about, what the merits are?

9 A. Happens to me all the time.

10 Q. Okay. And of course, you charge for that  
11 conference?

12 A. Absolutely.

13 Q. Page 26 of your deposition in this case,  
14 Doctor.

15 Page 25, this question is asked, referring  
to

16 Mr. Cesirano: Question: This was a man who called  
17 you?

18 Answer: Correct. Actually he came and met  
19 me in the office. We may have had a phone call prior  
20 to that, but I met him for the first time -- I'm  
21 actually looking at a question here.

22 A. I think your summary of it is very  
accurate.

23 Q. And you never asked him?

24 A. About --

25 Q. You never asked him why he came to you, a

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30011

1 breast cancer specialist --

2 THE COURT: Now we're getting into  
3 repetitious area.

he  
4 MR. REID: Your Honor, I object. I think  
5 ought to read the rest of the section.  
6 THE COURT: Now you want it to be read?  
7 MR. ROSENBLATT: Well, you read it on  
8 redirect.  
9 THE COURT: If you made reference --  
10 MR. ROSENBLATT: I didn't read anything, I  
11 don't think, on my cross examination.  
12 THE COURT: Counsel --  
13 MR. ROSENBLATT: I'm sorry. You know, it  
14 piles up.  
15 THE COURT: Hold on.  
16 MR. REID: Your Honor --  
17 MR. MOSS: We don't need that.  
18 THE COURT: I don't want people being so  
19 thin-skinned about that.  
20 Let me explain to the jury. If something  
is  
21 read by counsel, regardless of which side, from a  
22 deposition, then the other side has the right to read  
23 anything that relates to it that was not read by  
24 counsel such as the following sentence or the  
preceding  
25 sentence if it's material to what was said.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30012

so  
1 Counsel did not read from the deposition,

2 counsel on the other side can, on his own redirect,  
3 bring it up if he wanted to if it has something to do  
4 with something that was testified about on cross.

5 That's the simple matter. Let's move on.

6 MR. REID: Your Honor, may we approach for  
a second?  
7

8 THE COURT: Not necessary to approach.

9 BY MR. ROSENBLATT:

10 Q. Doctor, you are not an expert in  
11 epidemiology, are you?

12 A. I'm not.

13 Q. Do I understand correctly that partly the  
14 essence of your testimony is there is some unknown  
15 entity out there that no one has ever identified that  
16 you don't know the name of that causes or contributes  
17 to lung cancer, and maybe cigarette smoking is not  
the culprit, but rather maybe the culprit is this unknown  
18 mysterious entity?  
19

20 A. I'd go so far as to say that's very

accurate.

21 And I think that I'll be vindicated some day, even by  
22 yourself, when we finally find the mechanism by which  
23 lung cancer occurs.

24 Q. You're not going to be vindicated by me.

25 A. Well, I apologize. I may not.

1 Q. Don't wait for that to happen.

2 THE COURT: That comment is uncalled for.

3 Jury will disregard it.

4 BY MR. ROSENBLATT:

5 Q. Now, have you ever submitted an article to  
6 any medical journal on this theory that you have that  
7 you think some day may be vindicated?

8 Have you?

9 A. No.

10 Q. Are you a minority of one in the whole

United

11 States who holds this view or has ever publicly

stated

12 your view about this unknown entity which causes or

may

13 cause lung cancer?

14 A. I don't think so. I think there are a lot

of

15 physicians who share my views. I think the fact that

16 most people who smoke, what do we have, 50, 60

million

17 smokers in this country, and we have about 100,000

lung

18 cancers a year, a small percentage of patients

actually

19 get lung cancer who smoke.

20 And there are very heavy smokers who never

21 get lung cancer. So, intuitively, something else

must

22 be operational. Why does the guy who doesn't smoke

get

23 lung cancer, and why does the heavy smoker never get

24 lung cancer? There's something else going on.

25 Q. You know, you've talked a lot about this

30014

going

1 rigorous scientific method. Then you use a word like

2 intuitively. Intuitively something else must be

3 on. That's the opposite of science. Intuitively?

4 A. I'm waiting for the science.

5 Q. You're waiting for the science?

6 A. A lot of science begins with intuition.

7 Q. It's 1999, Doctor, and they're selling

8 billions of cigarettes every day.

9 MR. REID: Objection.

10 THE COURT: Sustain the objection.

11 MR. MOSS: Your Honor, can we come sidebar,

12 please?

13 THE COURT: Yes, if you want to.

14 (The following proceedings were had at

15 sidebar:)

16 MR. ROSENBLATT: You don't have a witness -

17 THE COURT: What is it you're objecting to?

18 MR. MOSS: What I'm objecting to is

counsel's

19 continued, improper questions and comments. This

case

20 is not about whether these companies are entitled to

21 sell cigarettes. It's a legal product.

22 THE COURT: Didn't I sustain the objection?

23 I thought I did.

24 MR. MOSS: Your Honor, but a simple  
25 sustaining of an objection, every time he comes in

and

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30015

Honor 1 has a shot like that is piling up so badly. Your

2 needs to at least let the jury know it's improper.

3 THE COURT: You don't think they know? You  
4 really don't think they know?

5 MR. MOSS: I don't think they know how  
6 improper it is, and Your Honor needs to tell them.

7 MR. REID: I just want to say, a minute ago  
8 when counsel had the deposition and the Court felt he  
9 hadn't read from the deposition, in fact, he had  
10 exactly read from the deposition and he left out the  
11 part that makes exactly the opposite point he's

trying

12 to make.

13 THE COURT: All right. I told you --

14 MR. REID: He read exactly.

15 MR. ROSENBLATT: It was honest confusion.

I

16 had my outline which I thought was his answer, and as

I

17 looked at it, I said no, the language I liked was in

a

18 question.

19 THE COURT: I thought you were reading.

You

20 go ahead and finish that up if you want to.

21 There's something to be said about all this

22 business about comments being made. There's an awful

23 lot of argumentation.

24 MR. ROSENBLATT: But they start with me.

25 says, I'll vindicate you too. I'm supposed to just -

He

-

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30016

1 THE COURT: I'm sitting here looking at it,

2 and I'll tell you where it starts. And a lot of it

3 starts with you. Of comments that you make and then

4 sets him off. Then he comes out with something and

5 sets you off. It really shouldn't be. The question

6 think is sustainable.

it

it

I

7 MR. ROSENBLATT: What was the question?

8 THE COURT: The question is selling

billions

9 of cigarettes every day. It's an argumentative

10 question, and it's really improper. So don't do it.

I

11 don't want to have to come up here every time you say

12 something and have Mr. Moss say that he has to

13 you or penalize you. I don't want to have to do that

14 every time.

correct

15 MR. ROSENBLATT: This is cross examination

in

people.

16 a case, in a unique case involving thousands of

17 Cross examination by its very nature allows for an

18 extremely wide latitude --

19 THE COURT: Of subject matter.

20 MR. ROSENBLATT: -- of subject matter. Of

21 style too.

22 THE COURT: Not necessarily.

23 MR. ROSENBLATT: Well, Judge, what you've

this

24 seen in criminal courts, you've prosecuted cases,

25 is nothing, you know, it's nothing. It's really

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30017

1 nothing.

2 THE COURT: Not necessarily.

head

3 MR. ROSENBLATT: If you compare in your

4 stuff you've seen.

5 THE COURT: I just read a Florida Supreme

things

6 Court decision on people in Tampa who said a few

that

7 that I would never have said and said a few things

8 maybe I would have said. But the Supreme Court says

9 it's wrong.

you

10 Forget all that. What I'm trying to tell

11 is you do a lot of, for lack of any better word --



12 MR. ROSENBLATT: Hyperbole.  
13 THE COURT: The adverb of hyperbole.  
14 MR. REID: Hyperbolic.  
15 THE COURT: -- hyperbolic phrases in your  
16 question, and you're assuming more than the witness  
had  
17 said in your effort to get him to say what you want  
him  
18 to say. And it creates a problem. And that's where  
19 the complaint is.  
20 MR. ROSENBLATT: I'm not picking on little  
21 old ladies. The people I'm picking, they can take  
care  
22 of themselves.  
23 THE COURT: But I have to worry about  
people  
24 reading a cold, calculated record and saying, is that  
25 stepping over the line? I've got to look at that  
too.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30018

1 I don't want this case to be remanded on issues --  
2 MR. ROSENBLATT: I'm not near the line.  
3 Maybe near, but --  
4 THE COURT: Cut down the argumentation.  
5 Are you going to be much longer?  
6 MR. ROSENBLATT: Yes.  
7 THE COURT: All right. That raises the  
8 question about this afternoon's witness.

5:00.

9 MR. REID: I have a witness ready.

10 MR. ROSENBLATT: I'm not going to go to

11 MR. REID: I can start qualifying.

12 MR. ROSENBLATT: But what about -- my  
13 impression is that this is a lengthy witness. He may  
14 not be finished tomorrow.

15 MR. REID: We'll have to come back the  
16 following Monday.

17 THE COURT: We'll worry about it later.

18 (The sidebar conference was concluded, and  
19 the following proceedings were held in open court:)

20 BY MR. ROSENBLATT:

21 Q. Doctor, not only have you not written  
22 anything in a medical journal about this concept of  
the  
23 unknown entity, but neither has anybody else. Can  
you  
24 cite me to one journal article anywhere which stands  
25 for the proposition of this unknown entity which is

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30019

1 really causing lung cancer?

2 A. I can't specifically recall seeing an  
article

3 like that published. I'm not sure it would even be

4 published. But I stand by my impression or  
observation

5 that most -- there are many people who smoke, many

lung

6 millions, and only a small percentage of them get  
7 cancer.

8 Q. You said you're not sure it would be  
9 published. You know it wouldn't be published in a  
10 peer-reviewed journal. How could it possibly be  
11 published?

the

12 A. Because it's not science yet. You know,  
13 idea that we are in the era now of being able to  
14 identify all the genes for all our diseases -- we've  
15 identified the gene for breast cancer. Over the next  
16 10 years, we may be able to identify the gene for  
lung  
17 cancer and find out why the gene goes wrong.

15

18 I think we will see this over the next 10,  
19 years, be able to finally identify the mechanism by  
20 which lung cancer occurs. We have the tools now.

21 Q. Medical science hasn't found a cure for  
22 breast cancer, has it?

find

23 A. We have the cure for breast cancer: We  
24 it early. We operate on the patient, the patient is  
25 cured.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30020

1 Q. But that's what it's always been?

2 A. Not all the time. We have found a gene for

that

3 breast cancer. And when we find out how to change

4 gene, be able to prevent it.

patient?

5 Q. Okay. My point was, you say we found the  
6 gene for breast cancer. That doesn't help the

7 A. It will in the future.

8 Q. That doesn't help the patient now, does it?

9 A. Correct.

say,

10 Q. It's interesting. A bunch of scientists

11 hey, we found the gene, doesn't help the patient,

12 doesn't help the woman with breast cancer?

you

13 A. Actually, that's not true. If you find the

14 gene in a woman who doesn't have breast cancer yet,

15 can give the patient the option to have prophylactic

16 surgery.

17 Q. Prophylactic surgery meaning removing both  
18 breasts?

19 A. Correct.

20 Q. Pretty drastic.

21 A. Very much so, but considering the  
22 alternative.

23 Q. Have you ever done that?

24 A. Yes.

both

25 Q. A woman didn't have cancer, you took off

to  
1 her breasts because you were sure that she was going  
2 get cancer?

3 A. No. She has the gene for breast cancer,  
4 BRC-1 gene, that incurs a risk for breast cancer of  
5 about 60, 70 percent. Doesn't mean she's going to  
6 get  
7 it. It means her estimated risks are 60, 70 percent.  
8 We do this operation quite frequently nowadays.

9 Q. So in that instance, without the woman  
10 having  
11 breast cancer and without being sure she ever will  
12 develop breast cancer, you remove both breasts?

13 A. Patients have the right --

14 Q. To refuse?

15 A. Patients have the right to request that.  
16 Most of the women come in requesting that operation.  
17 We tell them we don't know whether they're going to  
18 get  
19 breast cancer or not, but we have an operation to  
20 prevent breast cancer.

21 Q. Haven't you taken the position that family  
22 history isn't very important with breast cancer?

23 A. That family history is not important?

24 Q. Yes.

25 A. Most women who get breast cancer have no  
26 just  
27 history, 85 percent of women have no history; they  
28 happen to get breast cancer. Only 5 percent of  
29 patients have a family history.

30022

literature

1 Q. Isn't there a tremendous amount of  
2 on breast cancer that if someone's mother or  
3 grandmother or great grandmother had breast cancer,  
4 there is a far greater likelihood that a child, a  
5 grandchild or even a great grandchild will develop  
6 breast cancer?

that

high

for

be

7 A. Actually, the increased risk is in  
8 first-degree relatives. If your mother had breast  
9 cancer, your sister, your daughter, you have a higher  
10 risk for breast cancer. Having a grandmother who had  
11 breast cancer or not does not incur that high of a  
12 risk. It's the patient who has a significant family  
13 history who then is identified as having the gene,  
14 person who has the gene for breast cancer are at a  
15 risk that they're offered prophylactic surgery.

16 Some day we may find that there's a gene  
17 lung cancer, and those people who have that gene may  
18 susceptible to radiation, acidity in the stomach,  
19 tobacco, and those patients probably have to be  
20 counseled against those irritants. That's what we're  
21 looking for in the next 10 years.

then

22 Q. And if a gene which hasn't been discovered  
23 yet, if a gene is ever discovered for lung cancer,  
24 it would be that much more important for those

near 25 individuals who have the gene, that they don't go

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30023

1 cigarettes?

2 A. That may be so. At the same time, we may  
3 have the ability to change the gene from a bad gene  
to  
4 a good gene. Now I'm really getting speculative  
right  
5 now.

6 Q. Because that's never happened?

7 A. They said 10 years ago we'd never find the  
8 gene for breast cancer and we found the gene.

9 Q. Can you name, Doctor, a single medical  
10 school, a single board certified pulmonologist, a  
11 single professor, anyone at Sloan-Kettering, M.D.  
12 Anderson, Roswell Park, Mayo Clinic, who you can  
13 identify as believing in this unknown factor out  
there,  
14 unidentified, that causes or may cause breast cancer  
--

15 I mean, lung cancer?

16 A. I think I can find people who will echo my  
17 observation that if 50, 60 million people smoke in  
this  
18 country and only 100,000 get lung cancer, they would  
19 also raise the issue that there possibly and  
probably,  
20 I might add, is something else going on that gives

21 people lung cancer. Why don't all these smokers get  
22 lung cancer?  
23 Q. That's not what I asked you, Doctor.  
24 A. Well, that's what they --  
25 Q. I asked you if you can identify a single

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30024

1 individual at that level, board certified  
2 pulmonologist, who is on record publicly, in writing  
or  
3 orally, who would agree with what you're telling this  
4 jury, that there's an unknown entity?

5 A. I haven't polled all those doctors in the  
6 world, the universities, et cetera. I don't know  
what  
7 they think. I've discussed these issues with certain  
8 of my colleagues, and the observations I have are  
9 shared observations by many physicians --

10 Q. Well, you sure know that the Surgeon  
Generals  
11 have been thinking since '64 --

12 A. And I told you I agree with their  
terminology  
13 and public health message.

14 Q. And, gee, you've searched some of the  
Surgeon

15 General Reports from '64 to '89 and there ain't a  
word

16 in any of those Surgeon General Reports about this  
17 unknown entity that you're telling this jury about in



18 April of 1999; isn't that true?  
19 A. I think the Surgeon General doesn't allude  
to  
20 it, but he does comment that there are a lot of  
21 smokers, and he does give you the incidence of lung  
22 cancer. And what is intuitive from his report is  
that  
23 not everybody who smokes gets lung cancer.  
24 Q. How many times do you think you've said  
that  
25 today, that not everybody who smokes, not everybody  
who

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30025

1 smokes gets lung cancer? And I agree with you. How  
2 many times?  
3 MR. REID: I object, because he's --  
4 THE COURT: Sustained, it's argumentative.  
5 BY MR. ROSENBLATT:  
6 Q. Have you ever written a textbook?  
7 A. No, sir.  
8 Q. Have you ever contributed to a textbook?  
9 A. I did. It was called, The Companion to the  
10 Life Sciences. It was on breast cancer.  
11 Q. Medical students, people in their --  
serving  
12 an internship, residency, fellowship, medical  
13 education, consists of studying patients, watching  
14 doctors do what they do and reading textbooks, right?

Doctors

15 A. Correct.

16 Q. You would agree that this book, Cancer

17 Epidemiology and Prevention, second edition by

18 Schottenfeld and Fraumeni, is a recognized legitimate

19 textbook?

20 A. In all honesty, I've never seen this book

21 until you just showed it to me.

medical

22 Q. We got it at the University of Miami

23 book store. Cancer, Epidemiology and Prevention.

You

24 have no reason to believe that this is anything other

25 than an authoritative text, do you?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30026

1 A. You know, I've never seen the book.

2 Q. You're not familiar with it?

3 A. I'm not familiar with it. I think it's

4 unfair for me to comment on the quality of this book

5 when I've never seen it or used it or anything.

6 THE COURT: I'll sustain the objection on

next,

7 that. I understand what you're going to tell me

objection.

8 but based on these answers, I'll sustain the

9 BY MR. ROSENBLATT:

authors.

10 Q. Maybe he's familiar with some of the

to  
11 Those two names, the editors mean nothing  
12 you?  
13 A. No.  
14 Q. Never heard of them?  
15 A. You have to remember, I'm a surgeon who  
takes  
16 care of patients. I take care of my patients day in,  
17 day out. I don't do a lot of epidemiological  
reading.  
18 Q. One of the editors is David Schottenfeld,  
who  
19 has an endowed chair, which is very prestigious in  
20 academic medicine, isn't it?  
21 A. It means he's a full professor and somebody  
22 has given money to pay his salary in a university. I  
23 don't know who he is.  
24 Q. Well, I'll tell you in a minute.  
25 MR. REID: Your Honor --

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30027

1 BY MR. ROSENBLATT:  
2 Q. You were never a full professor, were you?  
3 A. No, sir.  
4 MR. REID: Objection, Your Honor.  
5 THE COURT: He's trying to identify these  
6 people, see if he knows them.  
7 BY MR. ROSENBLATT:  
8 Q. David Schottenfeld, he's an M.D.; John G.

Michigan;

National

you

9 Searle, professor of epidemiology, University of  
10 Michigan, School of Public Health, Ann Arbor,  
11 and Joseph F. Fraumeni, Junior, M.D. is the director,  
12 Division of Cancer, Epidemiology and Genetics,  
13 Cancer Institute, Bethesda, Maryland.

14 Is it fair to say, Doctor, that although  
15 may not be familiar with these two individuals, you  
16 recognize that the institutions they come from are  
17 prestigious institutions?

18 A. They're well known institutions.

19 Q. Dr. John A. Baron, Dr. Thomas E. Rohan?

20 A. Don't know them.

21 MR. ROSENBLATT: Can I be heard on this,  
22 Judge?

23 (The following proceedings were had at  
24 sidebar:)

25 MR. ROSENBLATT: Basically, Judge, you made

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30028

1 an opposite ruling. I mean, that's where we are, if  
2 one is worried about appellate record.

3 THE COURT: When I ruled at this point, you  
4 hadn't read the names of these people to see if he  
5 knew  
6 them.

6  
7  
previously.

8  
whether

it's,

MS. ROSENBLATT: I think you had  
independently found this book authoritative  
or not he recognized any of these folks here or knew  
any of these people.

MS. ROSENBLATT: Apparently he says he's  
treating patients. He doesn't really read it.

MR. ROSENBLATT: Here you have a bunch of  
contributors from the most prestigious --

THE COURT: And the Court can determine  
in itself, an authoritative book.

MR. REID: This is a book on epidemiology,  
and the witness is not here on epidemiology.

THE COURT: What are you going to ask?

MS. ROSENBLATT: The issues on cause.  
Because he testified on cause.

MR. REID: Every one of those statements is  
based on epidemiology, not scientific cause.

THE COURT: And he's made the statement  
before, too. Okay. If that's all you're going to

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30029

1 read, go ahead and do that.  
2 (The sidebar conference was concluded, and  
3 the following proceedings were held in open court:)

4 BY MR. ROSENBLATT:

5 Q. And you know, Doctor, the way textbooks are  
6 written, that no single doctor writes one of these  
7 1,000 or 1500 page, there are specialists from  
8 medical schools who write individual chapters, that's  
9 how most textbooks usually work, correct?

10 A. That's how most textbooks are written  
11 nowadays.

12 Q. This statement appears on Page 281: The  
13 evidence is overwhelming that cigarette smoking  
14 cancers of the oropharynx, larynx, lung and bladder.

15 So we have someone else who's not at all  
16 reluctant to use the word cause rather than risk  
17 factor.

18 Do you agree or disagree with that

19 The evidence is overwhelming that cigarette  
20 smoking causes cancers of the oropharynx, larynx,  
21 and bladder?

22 A. I think it's the same response I'd give you  
23 regarding that statement as I gave you regarding the  
24 Surgeon General statement. I agree with that in the  
25 generic sense. I think that's a good epidemiological

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30030

1 public health message to make. I've got no

reservation

2 about accepting that message.

3 Q. Let me make something clear to you, Doctor.

4 I'm not asking you if you think this is a good public  
5 policy statement. And I'm not asking you if you

think

6 this is a good thing for professors to do or Surgeon  
7 Generals to do. I'm asking you if the statement is  
8 true, in your opinion, true or not true?

9 A. I said I think it's true in the generic  
10 sense. I think in the scientific sense, to say that  
11 smoking caused that man's lung cancer individually, I  
12 think I've commented on this over and over again, and

I

13 say I don't think the data is there. The scientific  
14 data, the mechanistic cause of that lung cancer in

that

15 individual. I'm not trying to be difficult. I'm  
16 really trying to be consistent in my presentation to  
17 you.

18 Q. Well, these authors are talking to medical  
19 students. They're not talking to the general public.  
20 Talking to medical students. The evidence is  
21 overwhelming that cigarette smoking causes lung

cancer.

22 True or not true?

23 A. I don't know who they're talking to. You  
24 don't know either who that book is written for.

25 Q. No. My kids are going to be reading this

1 book, high school kids --

2 MR. REID: Objection.

3 THE COURT: Gentlemen, please.

4 A. Mr. Rosenblatt, I went to medical school.

I

5 never read books like that when I was in medical

6 school.

7 Q. That could be your problem.

8 A. What's that?

9 Q. That could be your problem.

10 A. I don't think so.

sense

11 Q. Well, that could be your problem in the

has.

12 that you have a view that no one else in the world

13 A. I think that --

14 Q. That we know about.

15 A. I think that's not true either. I said I

view

16 think there are many physicians who hold the same

17 that I do. And I don't want to say this again about

but

18 the number of people who smoke and get lung cancer,

was

19 to me, it's somewhat intuitive that if lung cancer

20 caused by tobacco, everybody who smoked, or the vast

21 majority of people who smoked would get lung cancer.

22 There are defensive mechanisms going on in

23 our bodies that prevent people from getting lung

mechanisms

24 cancer, and some day we'll find out what the

as

25 are that cause people to get lung cancer and as well



30032

1 other foregut problems.

2 Q. Who?

3 You said you're sure a lot of doctors agree

agrees

4 with you. Who? Give me a name of a doctor who

5 with this unknown entity theory of Dr. DerHagopian.

6 MR. MOSS: Your Honor --

7 THE COURT: Repetitious. Sustained. And

8 it's argumentative.

9 BY MR. ROSENBLATT:

10 Q. Did I understand you to say when you said

11 that you were donating the money you get in this case

12 to the Comprehensive Sylvester Cancer Center at the

13 University of Miami School of Medicine, you're

14 restricting that to this case, because you've made a

15 lot of money in other tobacco consultations, correct?

consultations

16 A. I've not billed for any tobacco

17 at all. I didn't even bill them as yet regarding my

18 work in this --

19 Q. But you will at some point?

to

20 A. I will at some point in time. I suggested

donate

21 you that the money should be donated. I plan to

name

22 the money to the Sylvester Center in Dr. Ketcham's

23 and Dr. Zepper's (phonetic) name.

Is

24 Q. My question to you is a simple question:

25 that across the board or does that only apply to this

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30033

1 class action where you're making that donation?

the

2 Or are you telling us under oath that all

3 money that when you eventually bill and get paid for

4 all the tobacco consultations you've done, are you

are

5 telling us all the money is going to be donated or

class

6 you saying the only money you're donating is this

7 action money?

8 A. Well, this is the only time I've ever been

9 employed, so to speak, by the tobacco company. Quite

10 frankly, I don't ever want to be employed by them

again.

11 again. I don't want to have to go through this

12 I don't enjoy coming here to court.

13 Q. Doctor, did you think you would walk into

jury

14 this courtroom and say what you had to say to this

15 and you would not be subjected to a vigorous cross

16 examination?

17 Did you dream that could occur?

18 A. No. I don't mind your cross examination at

19 all. I'm missing a day of seeing patients,

operating.

20 I'm a doctor. That's what I miss. I take care of  
21 patients. This is interfering with the way I like to  
22 live and practice medicine.

23 Q. But, Doctor, you have total, 100 percent  
24 control over that situation. All you had to do was  
to  
25 say to the lawyer who came to see you, no, I'm not

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30034

1 interested, I want to operate on my patients, I don't  
2 want to go to court and be cross examined by  
Rosenblatt  
3 or anybody else.

4 You could have said that. But instead, you  
5 chose, you made a choice, okay, I'll review it, and  
if  
6 you need me to testify, you need me to give a  
7 deposition, I'll do all those things.

8 A. Sometimes the cause justifies it. My own  
9 disruption of my day I felt I had -- I want to get my  
10 message across.

11 Q. Even though you've never gotten it across  
in  
12 any public forum, you never wrote a letter to any  
13 editor setting forth your views about the unknown  
14 entity, have you?

15 MR. MOSS: Your Honor, we are being --

16 MR. ROSENBLATT: We're being nothing.

17 THE COURT: Hold on. First statement that  
18 was made I sustain. Then he changed horses and  
talked  
19 about something else.  
20 Rephrase your question, please.  
21 Start with, "You've never written a  
letter."  
22 MR. ROSENBLATT: Is it okay to ask that,  
that  
23 he never wrote a letter?  
24 THE COURT: Yes. You can start with, "You  
25 never wrote a letter."

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30035

1 BY MR. ROSENBLATT:  
2 Q. You never wrote a letter to any medical  
3 journal, in effect, saying, you know, I disagree with  
4 all these people about cause. And my theory is that  
5 this unknown entity, rather than cigarettes, is  
causing  
6 the lung cancer in this country. We just don't know  
7 what it is yet, and some day we're going to find it.  
8 You never did that, did you?  
9 A. I've never written a letter. I've only  
10 conveyed these thoughts to many of my colleagues.  
11 Q. I don't know that I understood, quite  
12 frankly, your answer. You have consulted on tobacco  
13 matters other than this class action, correct?

obviously

I

14           A.    That is correct.

15           Q.    And my question to you is:  The money that

16   you're going to be paid -- I'm making a separation

17   between this class action where you've given a

18   deposition, you've reviewed materials, you're

19   testifying in court today.  I'm making a distinction

20   between this case and the other cases.

21           A.    I'm sorry.  There aren't really any other

22   cases.  The billings have not gone out to the tobacco

23   company as yet in any of these cases.

24                   I'll make the pledge to you that any monies

25   get from any of these cases from the tobacco company,

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30036

1    if you want, I'll make sure you get the check and you

2   can send it on to the university for me.

3           Q.    It's a deal.  It's a deal.

4           A.    You got it.

5           Q.    It's a deal.  Bill them high.  Sock it to

6   them.

7           A.    I'm an honest guy.

8           Q.    But you don't figure you're going to ever

9   take tobacco work anymore after this?

10           MR. MOSS:  Objection, Your Honor.

11           MR. ROSENBLATT:  Isn't that what you said?

12           THE COURT:  It's not what he said.  Please,

13 let's not get into this.

14 Do you have much more, counsel?

15 MR. ROSENBLATT: No.

16 THE COURT: I'm just looking at the clock.

17 MR. ROSENBLATT: Probably let's take a  
break.

18 THE COURT: I was wondering.

19 MR. ROSENBLATT: It's hard to tell.

20 THE COURT: Well, do you need a break or do  
21 you want to keep going? You want a break? Okay.  
22 Break time.

23 (The jurors exited the courtroom.)

24 (A recess was taken.)

25 THE COURT: Okay. Let's bring the jury  
out,

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30037

1 please.

2 (The jurors entered the courtroom.)

3 THE COURT: All right. Let's resume.

4 BY MR. ROSENBLATT:

5 Q. Doctor, you have never smoked, have you?

6 A. Yes, I have.

7 Q. Under what circumstances?

8 A. Well, like every kid who's 8, 9, 10, I used  
9 to sneak out and have a couple of cigarettes. When I  
10 was in the navy, I used to smoke a quarter of a pack,

mean,  
you  
intelligent  
there's

11 half a pack a day. I don't call that smoking. I  
12 I haven't smoked since.  
13 Q. Well, you saw me pick up your deposition,  
14 know you said something different, right?  
15 A. I didn't know you picked up my deposition.  
16 Q. Okay. I did.  
17 When you were in the navy, how long did you  
18 smoke?  
19 A. Two months.  
20 Q. And that was it?  
21 A. Yes.  
22 Q. Never went back to it?  
23 A. No.  
24 Q. Because as a scientist and as an  
25 person who keeps up with the reading, you know

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30038

1 only a downside to smoking, there's no upside?  
2 A. Well, I don't want to imply there's an  
3 upside. I don't even want to get into that. There's  
4 no upside to smoking.  
5 Q. You made the remark a few minutes ago, I  
6 think I'm quoting you, not word for word, but close,  
7 basically, you've got to be nuts to smoke?  
8 A. Yes, I agree with that.

9 Q. But you don't believe, do you, that smokers  
10 get what they deserve?

11 A. I never thought of it that way. I never  
12 really -- that would not be very altruistic on the  
13 of a physician to think that you get -- even though  
14 get disease from something, that you deserved it,  
15 a homosexual that gets AIDS deserved it.

16 Q. Correct. You don't feel that way?

17 A. I don't feel that way.

18 Q. A lot of your testimony obviously has been  
19 based on, as I understood it on direct examination,  
20 a clinician, because that's what you've certainly  
21 focused on in the last 20 years, your patients,  
22 diagnosing them, treating them, doing surgery,  
23 primarily breast cancer surgery, but that's been your  
24 focus?

25 A. That's correct.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30039

1 Q. Among the lung cancer patients that you  
2 had personally over the years, those who were  
3 even when you make the diagnosis, and I'm sure it's  
4 easy to tell a person that this horrible diagnosis



has,

5 in fact, been made, it's never comfortable for you,  
6 right?

7 A. Well, to give any bad diagnosis is not  
8 comfortable.

9 Q. And of course, you tell them to stop  
smoking,  
10 but over 50 percent of your patients who you tell  
have

11 lung cancer keep right on smoking?

12 A. I'm sorry?

13 Q. About 50 percent of your patients over the  
14 years who you've diagnosed with lung cancer and who  
are  
15 also smokers, about 50 percent of them don't take  
your

16 advice; they keep right on smoking?

17 A. I think -- I don't know what the percentage  
18 is, but a lot of them do continue to smoke. Quite  
19 frankly, some of them are dying of lung cancer, and I  
20 really don't make a particular effort to try and  
21 encourage them to stop smoking, if that's their sole  
22 pleasure left in life.

23 Q. You actually see -- in the last several  
24 years, although you see 20 to 25 patients a day,  
that's  
25 an average patient load for you, correct?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

1           A.    Maybe even more some days.

2           Q.    So that would be -- and you work a 5-day  
week

3    in the office?

4           A.    Yes.

5           Q.    So, in the course of a month, 4 or 500  
6    patients?

7           A.    Easily.   Some are not new patients.   Some  
are

8    old patients.

9           Q.    But on average, you only see one lung  
cancer

10   patient a month, so it's like way less than one  
11   percent?

12          A.    Maybe 2 to 4.   Many of those patients are  
my

13   own patients who develop lung cancer.

14          Q.    Page 55 of your deposition, Doctor, I'm  
going

15   to read a question and your answer.   Line 4.

Question:

16   Out of those two or three per month who have the  
17   foregut cancer, how many in a year have lung cancer  
18   that you see?

19               And your answer is:   Well, I probably see  
one

20   lung cancer a month.   Those include patients of mine  
21   who I've been following for years who come down with  
22   lung cancer, or new patients who come in for an  
opinion

23   regarding the recent diagnosis of lung cancer.

24               So about one a month lung cancer, right?

25          A.    I probably see a few more than that.

30041

deposition?

1 Q. But that's what you said on your

2 A. Yes.

is

3 Q. Okay. A tiny percentage of your practice

4 lung cancer?

5 A. Very small.

6 Q. Now, some of your patients who you diagnose  
7 with cancer and you want to stop smoking and they  
8 continue to smoke, you've actually referred to people  
9 who are more specialized in smoking cessation, the  
10 nicotine patch, stuff like that, right?

11 A. That's correct.

surgeon

12 Q. In your practice you have found as a  
13 that any time you put a patient to sleep who is a  
14 smoker, there is a real risk for pneumonia  
15 postoperatively with complications, correct?

16 A. The smoking patient has more anesthetic  
17 complications, has more wound healing complications,  
18 indeed.

nonsmoker?

19 Q. Why is that? I mean, what is it about  
20 smoking that causes the smoker to have more  
21 complications following an operation than a

move

22 A. I don't know the exact mechanisms, but I'm  
23 told they have more secretions. Their cilia don't  
24 as well to clear their lungs, but it's a well known  
25 observation both on my part and others. These

patients

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30042

1 have more problems.

because

2 Q. One of the primary reasons you tell your  
3 patients or people in general never to smoke is

lung

4 you know they will be far less likely to contract  
5 cancer if they do not smoke; is that correct?

6 A. Lung cancers and other foregut cancers.

gender

7 Q. And that's really regardless of age or  
8 or personality or anything like that?

9 A. That is true.

examination,

10 Q. You made the statement on direct

of

11 and I put quotes around it: We don't know the cause  
12 most of our cancers.

13 A. That's correct.

from

14 Q. And from the standpoint of mechanism and

predict

15 the standpoint of research, it's impossible to

16 when, if ever, we will know the cause?

17 A. I think that's true. I think, though,  
18 eventually, we will know the cause of most of our  
19 malignancies.

lot

20 Ironically, the AIDS epidemic taught us a

get

medicines

21 about cancers that develop in AIDS patients. And  
22 transplant patients, we now know that many of them  
23 cancers because of the immune mechanisms, the  
24 we give them to prevent rejection of the kidneys  
25 actually decrease their immunity to allow cancers to

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30043

malignancy.

patients

which

you

cause

1 grow in those patients.  
2 So we know there's some association between  
3 the depression of immunity and evolution of  
4 Q. What's that AIDS cancer, sarcoma --  
5 A. Kaposi's sarcoma. And many of those  
6 also get certain types of lymphomas of the brain,  
7 is very similar to what the kidney transplant patient  
8 may get.  
9 Q. Many of your patients who are smokers who  
10 have diagnosed with lung cancer ask you, because it's  
11 obviously a matter of great concern to them: Did my  
12 smoking cause my lung cancer? And you're honest with  
13 them. You tell them that, those who were heavy  
14 smokers, long-time smokers, yes, your smoking did  
15 your lung cancer?  
16 A. There are times I may be emphatic and

there's

may

really

his

he

17 times I may not be. One of the worst feelings in the  
18 world is to make somebody feel guilty about what he  
19 have brought upon himself. If I sense the individual  
20 might have that guilt, I might say, you know, we  
21 don't know, you might have gotten this anyway. If  
22 wife asked me or his kids, I usually tell them, yes,  
23 got his lung cancer from smoking.  
24 Q. And the smoking caused it?  
25 A. Yes.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30044

Rosenblatt

specialist;

1 MR. ROSENBLATT: Thank you, Doctor.  
2 MR. REID: Sidebar for a minute?  
3 (The following proceedings were had at  
4 sidebar:)  
5 MR. REID: Your Honor, I think Mr.  
6 opened the door to his family's treatment by  
7 Dr. DerHagopian by suggesting in numerous words that  
8 Dr. DerHagopian is a hack; that he's not a  
9 he's only a specialist in breast cancer; nobody would  
10 ever go to him for anything else; that he doesn't  
11 follow the procedures of legitimate doctors.  
12 If you recall the whole line of testimony

with

raise

13 that he did procedures that weren't in accordance  
14 the standards of care of physicians in the practice  
15 area. And I said this morning, I wasn't going to  
16 it unless the door was opened, and now we've had all  
17 this testimony which maligns Dr. DerHagopian, and I  
18 think he's now opened the door.

19 THE COURT: I don't. Okay. I'll deny your  
20 request.

21 (The sidebar conference was concluded, and  
22 the following proceedings were held in open court:)

23 REDIRECT EXAMINATION

24 BY MR. REID:

25 Q. Dr. DerHagopian, you were asked a lot of

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30045

from

the

1 questions about your views or you were read quotes  
2 the Surgeon General's Reports about causation and  
3 things such as that. You indicated you had read the  
4 '64 Surgeon General's Report and that you had read  
5 different ones over the years. And then you heard  
6 parts that counsel read to you today.

7 Now, based on all of that, has the Surgeon  
8 General ever reported a mechanism for causing lung  
9 cancer?

10           A.    I don't believe so, no.

11           Q.    Have you ever read of any -- and I'll try  
to

12   remember all the things that you were asked -- any  
13   universities, hospitals, clinics, researchers,  
14   clinicians, anybody that's in medicine, has anybody  
15   ever been able to identify the mechanism for lung  
16   cancer?

17           A.    I don't believe so, no.

18           Q.    Now, there have been mechanisms  
demonstrated

19   for some cancers?

20           A.    That's correct.

21           Q.    So it's not an insurmountable task to find  
22   mechanism in cancer?

23           A.    Well, it's a difficult endeavor, as I  
pointed

24   out.  I think over the next 10 years we'll be able to  
25   find more and more mechanisms.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30046

1           Q.    You also mentioned the lack of an animal  
2   model.  Did the Surgeon General's Report in '64 or  
any

3   subsequent one, based on all the things you read or  
any

4   of the things counsel read to you, has there ever  
been

5   an animal study where lung cancer was induced by  
6   breathing in tobacco smoke?



I  
or

7           A.    I don't believe so.  In Terry's report, he  
8    even made the statement that there's no animal model.  
9    Mr. Rosenblatt quoted from Surgeon General's Report  
10   subsequently and it mentioned experimental evidence.

11   just don't know what that experimental evidence was  
12   is.

13           Q.    In fact, one of the things you were read to  
14   by Mr. Rosenblatt was '82.  Are you familiar that the  
15   Surgeon General said in '82 there's been no animal  
16   model from lung cancer from smoking?

17           A.    That was my recollection.  I just don't  
18   remember the comment about the experimental evidence  
19   causing lung cancer.

20           Q.    When you were asked the question about who  
21   agrees with you and who doesn't agree with you, is it  
22   fair to say that anybody that you are familiar with  
23   would agree that there's not been a mechanism  
24   established for lung cancer and smoking?

25           A.    I think so.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30047

1           Q.    That's not a theory you made up here today?

2           A.    That's not my theory, that's a known  
3    observation.

4           Q.    In the '64 Surgeon General Report, do you

of

5 recall whether or not that Surgeon General said  
6 formally: Causation is established with three lines  
7 evidence?

8 A. So-called Koch hypothesis.

9 MR. ROSENBLATT: Object as leading.

10 THE COURT: Leading.

11 BY MR. REID:

12 Q. Do you know whether or not the Surgeon  
13 General --

14 MR. ROSENBLATT: Leading. It's the same  
15 thing.

16 MR. REID: I changed the question, Your  
17 Honor.

the

18 THE COURT: Well, you did change it, but  
19 answer was already out there before you changed it,  
20 which is the problem with that kind of question.

21 BY MR. REID:

22 Q. Do you know what the Surgeon General said  
23 about what kinds of evidence are required for classic  
24 causation?

25 A. We usually like to see -- the classical

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30048

epidemiology,

1 description of causation is you have some

2 that means there's an association with an irritant,

3 tobacco and lung cancer; two, this animal model; and  
4 three, there is mechanism, can you actually define  
what  
5 the chemical changes are in the cell or the genetics?

6 And unfortunately, we don't have that type  
of  
7 three hypotheses for not only lung cancer, but for  
most

8 cancers. We do have that in bacterial diseases and  
9 probably have that in AIDS, too. Even some of the  
AIDS  
10 cancers.

11 Q. Now, you had a lot of conversation about  
what  
12 Mr. Rosenblatt kept saying was your theory of a  
13 mysterious cause of cancer, I want to ask you about  
14 that. Is anybody in medical science today  
researching  
15 unknown causes of cancer, like genetics?

16 A. Oh, yes. This is the hot topic right now.

17 Q. In fact, you mentioned that the research  
18 money originally had dealt with -- had been more  
toward  
19 prevention?

20 A. No, treatment.

21 Q. Treatment, I'm sorry, and it's changing.

22 Now today what are people doing in research  
23 about lung cancer and causation?

24 MR. ROSENBLATT: Objection, Your Honor,  
25 beyond the scope.

1 THE COURT: Overruled.

2 BY MR. REID:

3 Q. What are they doing?

4 A. Much of the early money was spent on sort  
of  
to  
treating the problem after it was a problem, trying  
6 treat the lung cancer, trying to treat the foregut  
7 cancer, with not very good results. So now with our  
8 better understanding of genes, we're now probing the  
9 molecular basis of cancer. And I foresee in the next  
10 five years even that we'll be able to identify what  
are  
and  
the  
11 the genes in most malignancies and how they change  
12 how we can change them to prevent it. We now have  
13 tools to do it.

14 Q. Mr. Rosenblatt mentioned a bunch of  
15 organizations, Mayo Clinic and M.D. Anderson and  
16 Sloan-Kettering. Do you know if anybody in those  
17 places is researching this question that you've been  
18 talking about here today?

19 A. I believe they are. But to give you actual  
20 institutions and examples, I can't.

21 Q. Have you ever heard of something called the  
22 black box theory of cancer causation?

23 A. I haven't.

24 Q. Okay. Are you the only person as far as  
you  
to  
25 know who believes that there is a genetic component

30050

1 cancer?

2 A. No. I think -- I mean, it's self-evident  
3 about the genetics. There are certain population  
4 groups that have higher risks for cancer.

5 Q. Let's take head and neck cancer, for  
6 instance. Do you know whether or not anybody at the  
7 University of Miami is researching the question of  
8 as it might relate to head and neck cancers?

9 A. I don't know.

10 Q. Counsel asked you a question a minute ago,  
11 and I tried to write down what he said. He said:

12 made the comment, which I think is a valid point,

13 in spite of the enormous amounts of money spent on  
14 cancer research, finding the mechanism or whatever,

15 in spite of many dedicated people. We really haven't  
16 progressed much.

17 In a pure scientific sense, do you agree  
18 that statement?

19 A. Yes.

20 Q. Why do you agree with that?

21 A. Because it's true.

22 Q. Counsel asked you certain things are  
23 mysterious. Is that true?

means. 24 A. I don't know what the word mysterious

25 If it means certain things are difficult and escape

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30051

1 investigation and discovery, that's certainly true.

2 They said that about tuberculosis and we conquered  
3 that.

4 Q. So I'm clear, is there anything about the  
5 view you've expressed here today about there being a  
6 part of cancer mechanism that we don't understand, is  
7 that out of the mainstream at all in your field?

8 A. No. I think that most people would agree  
9 that most cancers -- we don't understand the  
mechanism

10 of most cancer. We don't know why they develop,  
don't

11 know why some people get them. And by the way, we  
12 don't know why some people are cured with our current  
13 therapies and why some people are not.

14 Q. So it wouldn't be fair to say that that is  
15 some sort of DerHagopian strange theory?

16 A. I don't think I'll ever have my name put on  
17 anything, but I don't take credit for that. That's  
an

18 observation I think most people can make for  
19 themselves.

20 Q. And it's been confirmed by numerous Surgeon  
21 Generals, too?

22 A. I think so.  
23 Q. Counsel asked you a lot of questions about  
24 whether you were qualified to give opinions about  
head  
25 and neck cancer because of the type practice that

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30052

fellowships  
with  
part  
of  
1 you've had recently. When you were in your  
2 at the University of Miami in cancer, did you deal  
3 all types of cancer?  
4 A. Yes, I did.  
5 Q. When you practiced at Miami for those seven  
6 or eight years at the same time you were teaching  
7 time, did you teach with patients who had all types  
8 cancer?  
9 A. Yes, I did.  
10 Q. Including head and neck?  
11 A. Correct.  
12 Q. And you operated on these people?  
13 A. Yes, I did.  
14 Q. And you diagnosed their diseases?  
15 A. Correct.  
16 Q. And you prescribed other treatments or  
17 referred them, if necessary?  
18 A. Correct.

head

- 19 Q. All head and neck?
- 20 A. Many head and neck.
- 21 Q. Many of the things I just said relate to
- 22 and neck cancers --
- 23 A. Correct.
- 24 Q. -- as well as all the other cancers?
- 25 I'll slow down. Sorry.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30053

neck

those

to

- 1 Now, when you taught at the University of
- 2 Miami, did your teaching involve other types of
- 3 cancers, a variety?
- 4 A. You mean did I teach the residents and
- 5 interns about other types of malignancies?
- 6 Q. Yes.
- 7 A. Yes.
- 8 Q. Now, in your private practice then, moving
- 9 ahead, in the early days did you focus on head and
- 10 cancer?
- 11 A. Did a lot more head and neck cancer in
- 12 days.
- 13 Q. What's the reason that your practice, the
- 14 nature of your practice has changed in recent years
- 15 be more focused on breast cancer surgery than some



16 other types of cancer?

17 A. One sort of decides when one has been

18 practicing for a while whether one could become

expert

19 in one type of area. Breast cancer is a very common

20 problem in women today. I decided to make that my

21 focus. And you can become pretty well known in one

22 area. If you do and do a good job, they'll beat a

path

23 to your door.

24 Q. When you talked about your tumor board work

25 at the various hospitals, tumor registry work, was

that

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30054

1 focused on any one particular kind of cancer?

2 A. No. As the medical director of the tumor

3 registry, you have to -- you're basically dealing

with

4 a review or accrual of all cancers that occur in that

5 hospital setting.

6 Q. When you worked on other cancer committees

at

7 these various hospitals, was that focused on any one

8 particular type cancer or did it vary?

9 A. All types of cancers.

10 Q. It sounds as if you were trying to count up

11 the number of patients you see. In the course of

your

12 career, you must have seen thousands of patients?

different

Head

13 A. I guess so. I never counted them up.  
14 Q. Okay. It's a large number in any event?  
15 A. Probably.  
16 Q. You've seen many patients with all  
17 kinds of cancers over the years?  
18 A. Yes.  
19 Q. I noticed on your resume the Society of  
20 and Neck Surgeons. Was that --  
21 MR. ROSENBLATT: Your Honor, this is from  
22 direct.  
23 MR. REID: Yes, sir.  
24 THE COURT: Well, yes and no, but you did  
25 talk about it a little bit and got into the subject

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30055

peer

1 matter. He's entitled to explore it.  
2 BY MR. REID:  
3 Q. Tell the jury what the Society of Head and  
4 Neck Surgeons is.  
5 A. There are basically two societies that take  
6 care of head and neck cancer. One is called the  
7 Society of Head and Neck Surgeons. That's another  
8 review organization. You have to show proficiency,  
9 experience and interest, and you apply for membership  
10 in that society. I've been a member of that society

it

as

breast

11 for over 10 years and still maintain a membership in  
12 even though I don't do as much head and neck surgery  
13 I did in the past.

14 Q. That's one way you keep up?

15 A. You go to the meetings and find out what's  
16 going on. I see patients with head and neck cancer  
17 every week, and some of them I elect to take care of  
18 myself and some, because I'm focusing mostly on  
19 cancer, I will refer out.

20 MR. REID: May I see that book you were  
21 using?

22 MR. ROSENBLATT: It's one of these.

23 MR. REID: I don't want to go into your  
24 documents.

25 MR. ROSENBLATT: Go ahead. You can.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30056

1 MR. REID: Do you know the page you were  
2 using?

3 May I approach, Your Honor?

4 BY MR. REID:

5 Q. I just want to ask you a question or two.  
6 You had never seen this particular book before?

7 A. No. I call these hernia books. When you  
8 lift them up, you get a hernia.

9 Q. What's the Chapter 14 called here?  
10 A. Called "Tobacco."  
11 Q. And the title of the book is -- what does  
it  
12 suggest to you the book deals with?  
13 A. Epidemiology.  
14 Q. Now, just so we're clear, what is your view  
is  
15 on the question of the epidemiology of lung cancer,  
16 there an association with smoking or not?  
17 A. Yes, there is.  
18 Q. So you don't dispute that at all?  
19 A. No, I don't.  
20 Q. Now, in the chapter that you're dealing  
with  
21 here, can you tell if, in fact, these authors are  
22 talking about epidemiology?  
23 A. Can I --  
24 Q. Can you tell whether or not the statements  
in  
25 this chapter are based on epidemiological studies and

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30057

1 so forth, statistical evidence?  
2 A. Well, I mean, most of the graphs seem to  
deal  
3 with statistical probability or possibility of  
cancer.  
4 But I -- it's unfair. Now I'm telling you you're

5 unfair to give me a book and ask my opinion on it.

6 Q. I realize it's a big book.

7 On Page 281 after the section that you were

8 asked about when it talks about the relations between

9 smoking and cancers and when it talks about the

10 association between smoking and cancer and the

11 relationship between cigarette smoking and leukemia

and

12 so forth, those would all be associations; is that

13 correct?

14 A. Associations and epidemiological

association.

15 That just means when they interview, they see what

16 diseases certain people had or what they died of and

17 they go back and interview them, if they're still

18 alive, and went back and looked at their medical

19 records and asked were they exposed to radiation or

did

20 he smoke.

21 Q. And you don't disagree with the

epidemiology,

22 do you?

23 A. No, I don't.

24 Q. It's the other two things that you believe

25 ought to be there to ultimately prove causation?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30058

1 A. Correct.

2 Q. Now, there was a question that was asked

3 about how you got here, and counsel read your  
4 deposition where you said Mr. Cesirano called you and  
5 you didn't know why.

6 Today you recalled or you thought you  
7 recalled that it had something to do with a relative  
8 his. Do you remember that testimony?

9 A. Correct.

10 Q. Let me go to a different part of your  
11 deposition that wasn't read to you and read this to  
12 you.

13 Page 26, Line 8, it's about eight pages in  
14 front of where you were to earlier this morning by  
15 counsel:

16 Do you have any idea at all how they got  
17 name?

18 Mr. Cesirano's father used to be an  
19 anesthesiologist and intensivist at Baptist Hospital  
20 here in Miami.

21 Whether he had contact with his father and  
22 knew his father and that was how he got to me, I just  
23 don't know.

24 Question: It never came up?

25 Answer: Well, I said: Gee, you have a

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

deposition

that's

in

to

of

understanding

fervent

step

1 similar name to Dr. Cesirano.

2 And he said: That's my father.

3 But quite frankly, if it came up in the  
4 conversation, I don't remember it.

5 Does that refresh your recollection?

6 A. Yes, it does.

7 Q. In fact, you told him that in your

8 as well?

9 A. Yes. Excuse me. I don't know whether

10 his father or an uncle. It was a relative.

11 Q. Just so we're clear, you did disclose that

12 your deposition --

13 A. Tried to.

14 Q. -- in the part that I just read to you?

15 Can I have a second, Your Honor?

16 Dr. DerHagopian, let me ask you this

17 question: Do you believe it's a reasonable position

18 take that causation has not been established because

19 the lack of animal models and the lack of

20 of mechanism?

21 A. I think so. I told you why. And my

22 belief is that, if we accept that, we'll stop doing

23 research on the basic mechanisms of certain cancers.

24 MR. REID: Thank you. That's all I have.

25 THE COURT: All right. Doctor, you may

30060

1 down. Thank you very much.

2 Let me talk to counsel for a minute,  
please.

3 (Discussion off the record.)

4 THE COURT: Why don't you take a few  
minutes

5 before we start the next witness. We'll have one  
more

6 witness, but we'll take five minutes.

7 (The jurors exited the courtroom.)

8 THE COURT: Okay. What seems to be the  
9 problem, anticipated problem?

10 MS. ROSENBLATT: I'll hand you, Your Honor,  
11 two things. First the disclosure for this witness.

12 THE COURT: Who is the witness?

13 MS. ROSENBLATT: This is Richard Thomas,  
14 Ph.D, which explains the nature of his testimony.

And

15 also, we received a lot of exhibits, but then there  
are

16 a whole group of excerpts from various articles that  
17 are purported to be for demonstrative aids.

18 Basically, the essence of our objection is  
19 that this witness appears to be a conduit for  
hearsay.

20 What he's done, he's not actually  
conducting

21 any research. He's not a historian. He's a Ph.D in  
22 chemistry and he has conducted research -- no, he has  
23 reviewed the literature in the public domain and he's



24 here to critique and discuss the various scientific  
25 articles.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30061

1 So what appears through his deposition and  
2 also through the various demonstrative aids that are  
3 attached certainly through the exhibits that are  
4 proposed is a series of medical articles. And  
instead

5 of bringing in the authors of those articles, he's  
6 coming in here to say what these people meant, what  
7 they found.

8 And it's not an exception, where I know  
Your  
9 Honor and we argued against it, Your Honor had made  
an  
10 exception to a limited extent on that issue of  
11 knowledge that was in the public domain on the issue  
of  
12 addiction and so forth.

13 That's not the point here. What they're  
14 trying to do through this witness, and it just  
doesn't  
15 make sense, is to have him discuss the evolution of  
16 causation in terms of the various medical articles,  
17 which is total blatant hearsay.

18 He can testify from our position what he's  
19 done. He's done some research himself, I think,  
20 limited. He's worked in a laboratory. What his

testify

can

21 opinions are, what he believes, I know Your Honor  
22 overruled the objection we've made a Ph.D can't  
23 as to causation, assuming you've overruled that, he  
24 render his opinions.  
25 But to now come in and be used as a conduit

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30062

testimony,

appears

this

1 to go through from the 1930s, '40s, '50s, '60s, '70s,  
2 '80s and '90s, the various medical articles and what  
3 they show and then to have a series of charts with  
4 excerpts clearly out of context from some 200-page  
5 article or book, a page here, a paragraph there, I  
6 mean, it's absolute violation of the rule that a  
7 witness cannot use literature to bolster his  
8 it can only be used for cross examination in Florida,  
9 and there's no exception to the hearsay rule here.  
10 So the whole thrust of his testimony  
11 to be total hearsay. And that's the essence of our  
12 objection. There's no exception to it, and he should  
13 be limited to what he's done, what his opinions are.  
14 And he can base it on hearsay, but he should not be  
15 able to go through and say, well, this author said  
16 and this author and go through a whole litany of it,  
17 because there's just no exception that would apply.

18                   So, we would move to strike his testimony,  
19   other than his opinions that he has, based upon his  
20   review of the literature without discussing and  
21   revealing and getting into the various articles that  
22   he's reviewed.

23                   Apparently, it's unique in like 1983 or 4  
he  
24   was hired by the companies to read articles and  
25   critique them by the tobacco companies. Over 20  
years

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30063

1   he's been basically reviewing medical literature  
never  
2   looking at the tobacco company's internal research  
only  
3   at outside literature and coming up with his spin on  
4   what these various articles mean. And it's just  
total  
5   hearsay from our perspective.

6                   MR. REID: Your Honor, I'd ask you first to  
7   look at Dr. Thomas's disclosure, and it precisely  
8   describes, and when you hear his testimony you'll  
see,  
9   it precisely describes what he's going to testify to,  
10   it follows the way his testimony is going to go.  
He's  
11   going to testify about the state of medical knowledge  
12   in all areas.

13                   Just to give you a little background, he is

pathology

detail.

scientific

the

part

14 board certified in about five different areas.

15 THE COURT: As an M.D. or Ph.D?

16 MR. REID: He's a Ph.D, but he does

17 and toxicology, and I'll go into that in great

18 He was the scientific director of the

19 National Academy of Science. You've heard about the

20 top 5 percent get into that. He arbitrated

21 disputes with the government, between agencies of the

22 government, which required him to go and look into

23 scientific literature and find out what the state of

24 science was at any point in time. He did that as

25 of his job for the government for a long period of

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30064

you

1 time.

2 And there's a lot more that qualifies him.

3 But let me go back and focus on the disclosure. If

4 look in the second paragraph, he's going to testify

5 about the state of medical knowledge from the '30s to

6 the present on the issues of causation and mechanism.

7 And then specifically relating to cause of human lung

8 cancer.

9 Then, if you look further, skip the next

there

10 paragraph, that's substantive testimony which they  
11 don't seem to be objecting to. He's going to testify  
12 that prior to 1950 what the state of it was, that

13 was no credible, reproducible scientific evidence.

14 Then he's going to talk about people in the  
15 '50s about the link. Then talk about the scientific  
16 community. If you go on down, there was a legitimate  
17 debate. Then he's going to go on and bring it up to  
18 the present and talk about what's happened in recent  
19 years of molecular biology and genetics.

I

20 Now, I've been listening to what's happened  
21 in the case and paying attention to your rulings, and  
22 have tried to fashion this testimony to be consistent  
23 with the rulings that you've expressed.

in

24 We are accused in this case -- and you have  
25 to go back to what we're accused of. We're accused

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30065

was

1 this case of committing fraud, of creating a false  
2 controversy of saying in The Frank Statement there

all

3 an issue whether cancer causation had been proven,  
4 whether things were properly associated. Remember

accused

5 the things in The Frank Statement? We've been  
6 of doing all this, and the first ground that they

have

was

that

You've

offered

whatever.

reasonable

be

people.

7 to show is that it's false, that the statement made  
8 false.

9 Now, the only way I can defend the claim

10 I have created a false controversy, that I have, in  
11 effect, lied about the state of scientific literature  
12 is to show what the literature was at the time.

13 had this discussion before. This is not being  
14 for the truth.

15 It's being offered to show that at various  
16 points in time -- see, during their case they pointed  
17 out the people who said lung cancer causes or

18 I have to be able to defend against the fraud, and I  
19 have to show that at various times it was a

20 position to take that smoking had not been proven to  
21 the cause of disease, particular diseases.

22 The only way I can do that is to bring  
23 somebody in who, because of their skill and training,  
24 is familiar and conversant with the scientific  
25 literature that exists written by all kinds of

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30066

1 This is literature by researchers, by Ph.Ds, M.D.s,

General

2 statements by the Surgeon General.

3 It's statements -- you know, counsel keeps

4 citing the Surgeon General. Well, the Surgeon

5 said a lot of important things that are different. I

6 need to be able to point those out. I'm not offering

7 him to show that any one statement that was made was

8 truth.

9 And since we've had that discussion, the

10 Court's concern was it's not hearsay in the first

11 place -- if you just don't offer it for the truth.

It's

12 not hearsay.

truth.

13 None of this is being offered for the

14 It's all being offered to rebut or to defend against

15 this claim that they're making that I created a false

16 controversy.

17 Now, the Court raised the issue early on

all

18 about this, that there was a concern about dumping

19 of this paper in because there might only be one

20 sentence that makes the point that counsel wants to

21 use, and this has come up a couple of times.

it.

22 Essentially the Court's ruling was redact

23 So I've headed that off by pulling out just the

one

24 parts -- I've done two things: I've produced every

25 of the articles to them. They have all the full

1 articles. Then I went ahead and pointed out the  
parts.

2 I've given them a road map to my case. I think  
that's

3 more than I've been required to do. But I've done  
it.

4 Now, if they think there's anything wrong  
5 with that sentence, they can raise it on cross  
6 examination. I've given them the tools to do that.

If  
7 the court grants this motion, I have to stand here  
8 defenseless of this claim to creating a false  
9 controversy.

10 We're not getting to the issue about  
whether  
11 or not anybody was truthful, which statement or which  
12 position is true. That comes from the other  
witnesses.

13 Dr. Thomas is here and very clearly explained in his  
14 disclosure that he's going to testify that there was  
a  
15 legitimate scientific debate based on all of these  
16 various articles.

17 THE COURT: I'll tell what you we'll do.  
18 I'll withhold on that until tomorrow after I hear his  
19 CV and qualifications, and I want to look through  
this  
20 anyway.

21 MR. REID: What did they give you?

22 THE COURT: They gave me a copy of his  
23 disclosure and whatever these things are.

24 MR. REID: You gave them all of them?

25 MR. ROSENBLATT: The conduit statements.



30068

1 MS. ROSENBLATT: We gave you the  
2 demonstrative. I only have one copy of the exhibits  
3 which we also object to.

4 THE COURT: I thought these were the  
5 exhibits.

6 MS. ROSENBLATT: Those are just the  
7 demonstrative aids which they're going to put up in  
8 charts, which are sentences out of the exhibits.  
9 There's also a large group of exhibits which we

object

10 to that I have a second copy, which I was going to  
11 review this evening.

anyway,

12 THE COURT: It's ten minutes to four  
13 and what I wanted to do was get him out of the way as  
14 far as the CV was concerned.

15 MR. REID: I won't finish, but I'll start.

break

16 THE COURT: If you finish early, we can  
17 early.

from

18 MS. ROSENBLATT: I just wanted to make one  
19 response on this. When we presented our testimony  
20 our experts, whether it's Dr. Richmond, our expert  
21 said, based upon his review of the literature through  
22 the years, there was no controversy from this period

23 on.

24 And they were board certified people,  
25 physicians, and they stated their opinion based on

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30069

1 hearsay.

I've

2 The defense can certainly defend, bring in  
3 physicians. I would object to a Ph.D to say, yes,

legitimate

4 reviewed the literature, I feel there was a

bolster

5 controversy based upon my review. But to then

articles

6 his testimony, which is what's happening, with

7 and articles and excerpts, we weren't permitted, we

8 didn't do that, I don't think the defense should.

9 THE COURT: We'll think about it.

go

10 MR. REID: Judge, let me make it clear. It  
11 will take me more than the rest of the time today to

12 through his background, so I won't be able to finish  
13 it.

But

14 THE COURT: That's fine. I have no problem  
15 with that. If you're going to do it, just do it.

16 we'll take an hour's worth, rather than tell you now  
17 again in a vacuum as to what you can or cannot do.

18 MR. REID: Just give me five minutes to get  
19 my stuff out.

see

20 THE COURT: I just want to review this to  
21 where you're headed.  
22 MS. ROSENBLATT: Shall I hand you the  
23 articles now?  
24 THE COURT: Are you talking about a stack  
25 this high?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30070

me.

tonight?

you

1 MS. ROSENBLATT: Well, it's pretty --  
2 MR. ROSENBLATT: That's what she does to  
3 THE COURT: You want to review them  
4 Be my guest.  
5 Anybody come up with a case that says can  
6 do this or can't do this?  
7 (A recess was taken.)  
8 THE COURT: Okay. Are we ready?  
9 MR. REID: Yes, sir.  
10 THE COURT: Let's get the jury out.  
11 (The jurors entered the courtroom.)  
12 THE COURT: Okay. We have a witness we'd  
13 like to do another 50 minutes with or so.  
14 All right. Call your next witness, please.  
15 MR. REID: Dr. Richard Thomas.  
16 THE COURT: Doctor.

17       Thereupon:  
18                               RICHARD D. THOMAS, PH.D.,  
19       having been called as a witness, was duly sworn,  
20       examined, and testified as follows:  
21                               DIRECT EXAMINATION  
22       BY MR. REID:  
23               Q.    May it please the Court.  
24                       Would you tell the jury your name and where  
25       you live, sir?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30071

live

1           A.    I'm Richard Dean, D-E-A-N, Thomas, and I  
2       in [DELETED].

3           Q.    Are you married?

4           A.    Yes, I am.

family.

5           Q.    Tell the jury a little bit about your

6           A.    I have five children, four boys and a girl.  
7       The oldest is 25 and the youngest is 14. And they're  
8       about three years apart.

9           Q.    What is your current occupation?

for

10          A.    I'm director of the International Center  
11       the Environment and Health.

what

12          Q.    Can you tell the jury a little bit about  
13       International Center does?

14          A.    The International Center is an organization

15 that does, as the name applies, mostly international  
16 work. Approximately 80 percent of our work is  
outside  
17 the United States. We work in places like Thailand  
and  
18 Asia and the former countries that make up Russia,  
19 eastern central Europe. Do a lot of work in  
20 environmental health, public health, environmental  
21 policy.

22 Q. Can you give us an idea, Dr. Thomas, in  
part,  
23 because we'll be taking a break, in general, what's  
the  
24 subject matter of the testimony, the opinions that  
25 you're going to be giving to the jury today and

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30072

1 tomorrow?  
2 A. Well, I was asked to go back and look at  
the  
3 state of the science, state-of-the-art back even  
before  
4 the 1930s to focus on whether there was a legitimate  
5 scientific debate about causation and the use of  
6 laboratory animal models and how epidemiology was  
part  
7 of that debate.  
8 Q. Do you also intend to discuss the concept  
of  
9 risk assessment?

10 A. Yes, I do.  
11 Q. You do that in your work as well?  
12 A. Yes. I do risk assessments and our office  
13 does risk assessments worldwide.  
14 Q. Have you also been involved in laboratory  
15 scientific research?  
16 A. Yes, I have.  
17 Q. Have you attempted to find causation in the  
18 scientific sense yourself?  
19 A. Yes. I've conducted laboratory animal  
20 studies in various laboratory animals over more than  
21 years to try to understand mechanisms of disease.  
22 Q. And now what I'd like to do is talk a  
23 bit about what you've done in your background that  
24 permits you to come in and talk about those areas.  
25 Now, I called you Dr. Thomas. What kind of

20

little

a

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30073

1 doctor are you?  
2 A. Ph.D.  
3 Q. You're not an M.D.?  
4 A. No, I'm not an M.D.  
5 Q. While I'm thinking about it, aside from the  
6 work that you've done in consulting and litigation,  
7 does your company receive any money from the tobacco

8 industry?

9 A. No, it does not.

10 Q. I was curious. You mentioned a Thailand  
11 project. Could you give us an idea, tell us a little  
12 bit about the Thailand project that your company

does?

13 A. Well, it's probably a good example of the  
14 types of things that our International Center does.

We

15 were asked by the World Health Organization, United  
16 Nations and the government of Thailand to come in and  
17 help them in cleaning up a major river that runs  
18 through Thailand. There's a large river that runs

the

19 full length of Thailand, starts up in the mountains

and

20 goes down through Bangkok.

21 There are about two to three million people  
22 that subsist off of that river. They live on a  
23 day-to-day basis, and much of their food comes from  
24 that river. There was real concern in Thailand about  
25 the health of these people and cleaning up the river,

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30074

1 the pollution in the river.

2 So, we worked with the public health  
3 officials, set up programs, we did monitoring studies  
4 of the river itself, did computer modeling of the

river

5 where we actually took the river and developed a  
6 computer model which told us at any particular time  
7 what was happening along that river.

8 So, if there was a spill in the river, then  
9 we knew that the concentrations would be down the  
10 and how we could start mitigating that problem and  
11 maybe warn people that the water was going to be  
12 contaminated.

13 Q. Did this involve doing risk assessments,  
14 instance?

15 A. Yes. The computer modeling that we did was  
16 risk assessment for the river, if you will.

17 Q. All right, sir. Now, to give us a little  
18 idea on a day-to-day basis in your company, can you  
19 tell us what you do?

20 I assume you split your time, divide your  
21 time among a number of activities?

22 A. Well, we have several projects that are  
23 active at any one time, and I'm a scientist and my  
24 interest is in science, so I tend to focus a lot on  
25 science, and I'm interested in the science.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30075

1 I have overall responsibility for doing the science  
in



2 the individual projects.

3 And then, as director of the center, I have  
4 responsibility to make sure the projects are run on  
5 time, that they're within budget. So I spend a  
6 of my time in administration as well. But actually a  
7 lot of my work is on the day-to-day science.

8 Q. Tell the jury where you went to college and  
9 what degrees you received and bring your education up  
10 to the end.

11 A. Okay. I received a Bachelor's degree in  
12 chemistry from Utah State University. Received a  
13 in chemistry from Colorado State University. After  
14 that, I did post-doctoral work in pathology and in  
15 forensic toxicology at George Washington University  
16 Washington, D.C. and the Armed Forces Institute of  
17 Pathology including internship at Walter Reed Medical  
18 Center.

19 Q. Okay. Now, I notice -- I didn't hear  
20 Master's mentioned in there. Is that normal or  
21 You skipped it.

22 A. I skipped the Master's degree. I was in a  
23 Ph.D program which they would select a few what they  
24 called gifted students and would accelerate them  
25 through a Master's degree so you actually didn't have

a

1 to get a Master's degree. You could go straight for

2 Ph.D.

3 So I took a lot of preliminary exams and  
4 qualified to skip the Master's degree as one of these  
5 gifted students.

6 Q. Now, you mentioned some of your  
7 post-doctoral -- you mentioned two or three. Was the  
8 first post-doctoral at George Washington?

9 A. Yes, George Washington University.

10 Q. Tell the jury what that involved.

11 A. I was -- my interest, and this may help the  
12 jury understand as I talk about my education, my  
13 interest over the last 20 to 25 years has been in  
14 understanding human disease and mechanisms of human  
15 disease. Both my graduate work, my Ph.D work, for  
16 example, was in developing drugs for treating cancer.

17 So, after I received my doctor's degree, I  
18 wanted to increase my background and certification in  
19 pathology. So I studied pathology at George

Washington

20 University and at the Armed Forces Institute of  
21 Pathology.

22 Q. Okay. Now, let me ask you, we're going to  
23 have some words I want to deal with here. First one  
24 you mentioned is pathology.

25 Now, tell the jury what is pathology.

may  
human  
develop

1           A.    Pathology is the study of human tissues,  
2           be the tissue itself, may be the organ within the  
3           body to try to understand disease, how diseases  
4           within that tissue.  Sometimes it involves actually  
5           diagnosing a disease in the tissue by looking at it.  
6           But that's -- pathology deals with the tissues.

come  
doctoral  
of

7           Q.    Okay.  Let me back up a second and we'll  
8           back to that in a minute.  But the second post-  
9           work you mentioned was in the Armed Forces Institute  
10          Pathology?

11          A.    That's correct.

12          Q.    Now, tell the jury what is the Armed Forces  
13          Institute of Pathology?

institutes  
the

14          A.    The Armed Forces Institute of Pathology is  
15          the leading or one of the leading pathology  
16          within the United States, actually probably within  
17          world.

18                   That's an organization that sets standards  
19          for pathologic analysis.  Armed Forces tells you that  
20          it's an institute that is sponsored by the Department  
21          of Defense, but it really has served as the basis for  
22          pathological diagnosis worldwide for many years, and  
23          it's considered the leading organization in this  
area.

24          Q.    And what did you do there?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30078

particularly 1 autopsy findings and pathology for cancer,  
2 focusing on lung cancer and upper respiratory tract  
3 cancers. I dealt with issues such as emphysema and  
4 also dealt with heart disease, particularly sudden  
5 cardiac death syndrome.

6 They had a project that they were very  
7 concerned about pilots having a heart attack and  
flying 8 into the ground. And so we were trying to develop  
9 techniques of being able to predict whether pilots  
10 would have heart attacks before they flew.

this 11 Q. And the third place you mentioned, maybe  
12 overlapped, was the Walter Reed Medical Center?

13 A. Yes.

14 Q. What is that?

15 A. Well, Walter Reed Medical Center is the  
16 leading medical center for the Department of Defense  
in

that's 17 Washington, D.C. And there's a lot of research

Armed 18 conducted at Walter Reed Medical Center, and the

19 Forces Institute of Pathology works directly with

20 Walter Reed Medical Center, so the two, even though

21 they're separate centers, work directly together.

22 Q. Now, the jury has heard testimony from  
23 medical doctors about pathology. How can someone who  
24 is not a medical doctor, a Ph.D, also be a

pathologist?

25 A. Most pathologists are M.D.s. There's

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30079

1 actually quite a few pathologists that are Ph.Ds. I  
2 specialize in what's called experimental pathology.

If

3 you look at experimental pathologists, almost all of

us

4 are Ph.Ds. If you're in a hospital and have a tissue  
5 removed, usually that's an M.D. pathologist, although  
6 some Ph.D pathologists do that as well.

7 Q. Do you ever get involved in any patient

care

8 or patient work at all in your role as a pathologist?

9 A. Obviously, as an M.D., I don't treat

patients

10 myself. But I do advise physicians. I often get

calls

11 from physicians, not only the Washington, D.C. area,  
12 but throughout the world that are interested in  
13 particular areas of cancer. They maybe want to use a  
14 particular treatment for cancer, and it's one that

I've

15 worked on in the past.

16 Sometimes they will call me about or I'll

go

17 to a hospital to advise on a patient that's been  
18 poisoned and they're concerned about how to treat a  
19 particular patient in that I have expertise in how to  
20 deal with particular poisons.

21 Q. Now, let me ask you about another concept,  
22 and that is toxicology, because we're going to be  
23 talking with you in a little bit about that.

24 THE COURT: You have experience with that  
as  
25 well?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30080

1 THE WITNESS: Yes, I do.

2 BY MR. REID:

3 Q. Tell the jury what your understanding of  
that  
4 term is.

5 A. Toxicology is the study -- I think the  
6 easiest way to understand it is the study of poisons,  
7 study of toxic materials.

8 Toxicologists deal with the chemistry and  
the  
9 biochemistry of how chemicals interact in the body to  
10 produce disease and damage. As you can see, there's  
11 actually a lot of overlap between toxicology and  
12 pathology in that toxicologists, people like myself,  
13 usually start in the chemistry side of it and then go  
14 into the pathology side so we can both look at the

then

15 chemical reactions that occur within the body and  
16 the tissue changes that happen after there's chemical  
17 reaction so we can then understand mechanisms of  
18 disease. That's actually the basis of mechanism.

a

19 Q. Now, I noticed in your resume that you had  
20 particular interest in your career in childhood  
21 leukemia?

22 A. That's right.

you

23 Q. Would you tell the jury a little bit about  
24 what your experience was in childhood leukemia, why  
25 were interested in that?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30081

earlier,

1 A. Over the years I've been very interested in  
2 children's health problems, and the work that I did  
3 when I was in graduate school, as I mentioned  
4 was to develop drugs for treating cancer.

childhood

5 And some of the drugs that we were working  
6 on, these are called alkaloids we were developing for  
7 treating childhood leukemia. At that point,  
8 leukemia was usually a fatal disease in children, and  
9 so there was a lot of work being done to try to cure  
10 that.

11 And that work has continued over the years.

12 I still continue to work with the National Cancer  
13 Institute on developing treatments for leukemia. And  
14 some of the drugs that I developed when I was in  
15 graduate school, one or two are currently used, very  
16 successful in treating childhood leukemia.

17 Q. Now, we've also heard about board  
18 certification?

19 A. Yes.

20 Q. And we've had some witnesses in who have  
been  
21 board certified. Are you board certified?

22 A. Yes, I am.

23 Q. Now, are you board certified in one  
24 particular area or more than one area?

25 A. I'm board certified in five different  
areas.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30082

1 Q. Tell the jury what five areas you are board  
2 certified in.

3 A. Board certified in forensic medicine, board  
4 certified forensic examiner, board certified in  
5 toxicology, board certified in chemistry and also  
board  
6 certified environmental inspector.

7 Q. The jury has heard about the process that  
one  
8 goes through to get board certification, exams and



9 credentials and approvals and so forth. Were you  
10 required to do that, do some combination of those in  
11 each of your five areas?

12 A. Yes, I was.

13 Q. So those are five separate --

14 A. Yes, those are five separate board  
15 certifications that each had requirements and exams  
16 that each had to be passed separately.

17 Q. I want to talk a little bit about your  
18 employment experience. I'd like to start -- you told  
19 us about your current company and what you do. I

want

20 to first talk about the -- we're going to work  
21 backwards.

22 Now you work for something called the  
23 National Academy of Sciences, right?

24 A. Yes.

25 Q. I'll just put National Academy. How long

did

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30083

1 you work that?

2 A. I was at the National Academy of Sciences  
3 about 12 years.

4 Q. Now, the jury heard, they've seen lists of  
5 board members for the Council for Tobacco Research,  
6 instance, who were members of the academy. Tell the

for

for

Sciences.

Federal

governments

not

deal

academy,

7 jury exactly what is the National Academy of

8 A. The National Academy of Sciences is an

9 independent organization. It's not part of the

10 Government. A lot of people think it's a federal

11 agency, but it's not. It's totally independent from

12 the Federal Government.

13 It was established by Abraham Lincoln to

14 provide advice to the Federal Government, state

15 governments and local governments, foreign

16 when it's in our national interest. And this is

17 independent third-party advice, so that's why it's

18 part of the Federal Government. So it's set up to

19 with -- particularly with controversial scientific

20 issues. And so that's why it's a third party

21 organization.

22 Q. What is the reputation of the whole

23 of the National Academy in the scientific community?

24 A. It's considered the leading or one of the

25 leading scientific or premier organizations in the

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30084

considered

1 United States. I think even worldwide it's

2 by many as a premier scientific organization

worldwide.

3 Q. Now, the individual scientists who were  
4 elected -- is elected the correct word?

5 A. Yes.

6 Q. Selected?

7 A. Elected.

8 Q. How do scientists become associated with  
the  
9 National Academy of Sciences?

10 A. Scientists are elected to the National  
11 Academy of Sciences based on outstanding scientific  
12 achievements. Over the years of work, if they've  
13 accomplished important research, important  
14 contributions, then they may be elected by their  
peers  
15 to that organization.

16 Q. Can you give us an idea of what percentage  
of  
17 scientists in a particular field are elected or total  
18 scientists in the country or anything like that?

19 A. It would be difficult. It would be less  
than  
20 a tenth of one percent of all scientists are members  
of

21 the National Academy of Scientists.

22 Q. Did you hold several different positions at  
23 the National Academy or just one?

24 A. Over the 12 years, I held several positions  
25 at the National Academy.

1 Q. Tell the jury what positions you held.

the

2 A. Well, I started as a senior scientist at

years,

3 National Academy of Scientists and running day-to-day

4 scientific studies. Within about three to four

5 I was promoted and took over the Division of

6 Toxicology, Epidemiology and Risk Assessment and

7 continued to direct that division for about eight or

8 nine years.

the

9 And I was also a -- when I was promoted to

10 that, I was later also promoted to what was called

11 principal scientist.

12 Q. What does that mean?

in

13 A. Like a principal in a law firm, there were

14 just a few people within the National Academy of

15 Sciences that were designated as leading scientists

16 that organization, and it was up to us to resolve

17 scientific disputes and deal with final scientific

18 issues when there was controversy.

most

19 Q. Now, the division, then, that you worked

20 in over your years was called the Division of

21 Toxicology, which we talked about, Epidemiology and

22 Risk Assessment?

23 A. Yes.

24 Q. And so it's fair to say that all of those

25 areas made up the types of activity carried on by the

30086

1 group that you were in charge of?

2 A. Yes. I should mention that about three or  
3 four years before I left the National Academy, there  
4 was a decision to rename the group to Human

Toxicology

5 and Risk Assessment. I think they wanted to shorten  
6 the name, and they decided Epidemiology and Human  
7 Toxicology were similar enough that they could

combine

8 them, but it was still the same division.

9 Q. So the person answering the phone didn't

have

10 to say as much, like law firms?

11 A. Yes.

12 Q. In looking at your resume, it looks like

you

13 had sort of three general areas of responsibility?

14 A. Yes.

15 Q. Could you tell the jury what you did in

each

16 of these areas?

17 A. First of all, I had responsibility for all  
18 the scientific studies done within my division. That  
19 was approximately 30 studies at any one time, 35

20 studies sometimes that were being carried out. In

21 addition, I mentioned I was a principal scientist at

22 the National Academy, so I was called upon throughout

23 the National Academy to advise other organizations

when

24 there were issues of pathology or toxicology or

25 epidemiology that came up.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30087

1 And finally, I had responsibility for  
2 obviously managing the division. And that was  
3 typically what you would think a manager would be of  
4 making sure budgets were correct and that the staff  
was  
5 organized properly and that we were doing a good job  
in  
6 getting these studies completed.

7 Q. Did you have any responsibility or any role  
8 in the international work that was carried out by the  
9 National Academy?

10 A. Yes, I did. I worked a lot with the World  
11 Health Organization, United Nations. You know, there  
12 are several international groups, a lot of foreign  
13 governments like the German government and the  
Russian  
14 government. These were -- U.S. National Academy of  
15 Sciences focuses mainly on the United States, so most  
16 of the work we did was in the United States. But  
17 because a lot of the public health work is outside of  
18 the United States -- a lot of our interests, quite  
19 frankly, are outside the United States. I did quite  
a  
20 bit of work there as well.

21 Q. Now, within your area, I understand there

specific

22 were different committees that would focus on

23 types of problems?

24 A. Yes.

the

25 Q. Can you give the jury an idea of some of

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30088

1 various committees and the subject matter involved in  
2 their work that you would have been responsible for  
3 during your time there?

cancer,

4 A. Well, the types of studies that we ran were  
5 quite wide in range. They involved everything from  
6 very basic scientific studies of mechanisms of

7 for example, or mechanisms of some other types of  
8 disease, how to conduct a particular type of animal  
9 study, all the way up to analyzing specific chemicals  
10 that the government may be interested in or in

Congress

11 in trying to come up with ways that are trying to  
12 protect people from these various chemicals to the  
13 other end where we were taking the scientific  
14 information that we had analyzed and were applying it  
15 to public health needs, national needs.

16 Q. Let me digress for a second. Does the  
17 National Academy of Science have its own laboratories  
18 where these scientific tests are carried out?

19 A. No. The National Academy conducts most of

sometimes

20 its research based on published information,

21 unpublished scientific information.

22 When we wanted to have a study conducted to

23 answer some question, for example, if we were doing a

24 study for the Department of Defense and I needed to

25 know what would happen in dogs exposed to a

particular

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30089

1 chemical and nothing had been done to that extent, I

2 would go back to the Department of Defense and tell

3 them that I thought before we could answer the

question

4 they'd asked us, you need to run this dog study.

Then

5 we would design the protocols, they would conduct the

6 study, and we would monitor the study and then

analyze

7 the results of the study.

8 Q. So you were reviewing the scientific

9 literature to find out what the state-of-the-art was?

10 A. That's right.

11 Q. And you were also writing protocol, which

is

12 what for an experiment? What's a protocol?

13 A. Well, a lot of what we did at the National

14 Academy was the state-of-the-art, meant going back

and

15 looking at the history of what had been done



questions

16 scientifically over the past. A lot of these  
17 are controversial, and you can't answer the questions  
18 without looking at some of the history of what had  
19 been done in the past.

been

20 In addition, we would analyze its articles  
21 themselves, take a look at the specific articles, and  
22 then sometimes request the research studies be done.

23 Q. If you requested a research and you wrote a  
24 protocol, what does that mean?

25 What did you do then?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30090

1 A. The protocol is basically a cook book. It  
2 says there's going to be so many animals in the study  
3 and this is how they will be fed. This is how they  
4 will be treated. It describes in minute detail how  
5 study will be conducted, and that's the type of thing  
6 that we often will write.

the

7 Q. Now, that was the digression. I want to go  
8 back to the committees that you were getting ready to  
9 tell us about. I notice in your resume that you did  
10 some work regarding lead exposure. Can you give us  
11 idea of how that work was done?

an

12 A. Well, as I mentioned, I've also been very

13 interested in children and children's health issues.  
14 And having started out with my basic training in  
15 infants and children's health, we did a study on lead  
16 and children's exposure to lead, how to reduce the  
17 toxicity of lead in children and how to treat  
children  
18 who have been exposed to lead.  
19 And we had several chapters that focused on  
20 the historical development of the science for lead  
and  
21 how that led to the understanding of a mechanism for  
22 lead damage in infants and children, particularly  
23 neurologic damage.  
24 Some of the other types of studies dealt  
with  
25 pesticide exposure in infants and children and how to

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30091

1 protect infants and children in their diet from being  
2 exposed to pesticides that may poison children.  
3 Q. I notice -- I wanted to ask you about one  
4 particular one. You had a program relating to  
5 biological markers?  
6 A. Yes.  
7 Q. What's a biological marker?  
8 A. The biological marker program is an example  
9 of one of the very early or very basic programs that  
I  
10 was telling you about.

technique

these

the

actually

disease

11                   Biological marker serves as a basis for  
12   understanding biological mechanisms. It's a  
13   or a set of tools that scientists such as myself use  
14   when we go into the laboratory. We look for what are  
15   called biological markers. And all that means is  
16   are small changes within the biological system that  
17   tells us what's happening to the animal.  
18                   So if we go in and do laboratory animal  
19   studies or in humans, because most of my focus over  
20   years has been to deal with human disease, a lot of  
21   this work in these biological markers reports  
22   dealt with human effects, how could we predict in  
23   humans when they're going to get sick and what  
24   they'll actually get by looking at these little  
25   biochemical or pathological changes within either

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30092

1   chemicals or tissues, and we call those biological  
2   markers.

3           Q.   And does that have anything to do -- would  
4   that have anything to do ultimately with cancer  
5   research, for instance?

6           A.   A lot of -- each one of the reports that we  
7   produced had a full section on cancer research. For

markers

8 example, one of the reports was the biological

9 of the pulmonary system or the lungs and we focused a

cancer,

10 great deal on lung cancer, mechanisms for lung

the

11 historically how we've understood lung cancer over

12 years.

13 Q. I notice a reference to yellow rain. What

14 was that? Was that an air pollution problem?

that

15 A. No. I laugh because that was something

16 came out in the newspaper. That had to do with a

17 chemical warfare agent that was used in Cambodia or

18 Kampuchea during and after the Vietnam War, and there

19 had been a debate as to whether the communists used

20 chemical warfare agent. They said it was used in

21 airplanes and rained down in yellow rain, and so the

yellow

22 newspapers picked this up and started calling it

23 rain.

24 So I worked with the Department of Defense

in

25 and with the intelligence community and with people

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30093

1 Asia to try to understand what actually the soldiers

health

2 were exposed to because I was interested in the

3 of these soldiers and how to treat them if they did

4 have exposures.

were 5 Q. Now, you told us, I think you said there

6 usually 25 to 30, 20 to 30 active investigations or

time? 7 projects going on under your direction at any one

8 A. That's correct.

9 Q. Over the time that you were there, how many

10 different investigations or scientific studies do you

11 believe you participated in?

12 A. Approximately 250 scientific studies.

13 Q. Now, sometimes at the National Academy, did

14 you do work for other agencies of the Federal

15 Government?

16 A. Yes, I did.

what 17 Q. Can you tell the jury a little bit about

18 you did for NASA?

19 A. Well --

20 Q. Space people?

21 A. Yes. My division worked for about 28

22 different federal agencies at any one time. And NASA

23 is one of the agencies. I mentioned that we would

look 24 at specific chemicals to try to understand what the

25 toxicity of those chemicals were and whether they

would

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

acceptable

they

space

on

to

the

on

on

on

1 produce cancer or long-term effects.

2 And so we worked with NASA to set

3 levels of exposure. In other words, what the

4 astronauts could be exposed to for the chemical as

5 went into space so that they would remain healthy,

6 could function, not only while they were in space but

7 after they returned back to the earth so they didn't

8 get cancer in 20 years or something of that nature.

9 So we did a lot of the work on the space

10 shuttle program, setting these levels for astronauts

11 during the space shuttle program and for the new

12 program that's being built now.

13 In addition, we dealt with emergency

14 exposure, if there's an accident, say there's a fire

15 board, what level of different types of contaminants

16 from the fire could they be exposed to and continue

17 carry out their responsibilities to fix or put out

18 fire and fix the problem that they had and continue

19 with their mission.

20 Q. Did you also work for the Environmental

21 Protection Agency?

22 A. Yes. I did a lot of work for the

23 Environmental Protection Agency throughout the years

24 such things as water, clean water, on air pollution,

25 indoor air, understanding mechanisms of disease. We

30095

of

1 developed guidelines for risk assessment and the use  
2 statistics by the Environmental Protection Agency on  
3 how to use statistics to come to public health  
4 decisions.

time

5 Q. And you were doing this back during the  
6 you were at the National Academy?

work

7 A. That's right. Well, I did some of this

we're

8 for other organizations as well. But that's what  
9 focusing on right now.

10 Q. Now, did you have any involvement with the  
11 Agent Orange?

12 A. Yes, I did.

13 Q. What did you do regarding that?

have

14 A. As I mentioned, I was a principal scientist  
15 and was involved in the review of the scientific  
16 information surrounding military personnel's exposure  
17 to Agent Orange and the potential cancer that may  
18 occurred from that.

19 Q. How about what's called the Gulf War  
20 Syndrome; have you had any involvement?

military

21 A. Yes. When I was at National Academy of  
22 Sciences, I did some initial work in the monitoring  
23 that was done during the Persian Gulf War for

area  
24 personnel and people that were working within the  
25 and have continued to work on that for the Department

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30096

1 of Defense over the last several years up until  
2 present.

3 Q. Okay. I'm interested in knowing whether or  
4 not your agency, the National Academy, ever acted as  
an  
5 arbitrator, if you will, of scientific issues when  
6 there was a dispute between two other federal  
agencies?

7 A. Yes, we did. That was really the -- as you  
8 may have understood from what I said, was one of the  
9 principal purposes of the National Academy of  
Sciences.

10 That's why Abraham Lincoln chartered that  
organization  
11 was he was having a dispute between two federal  
12 agencies, and he couldn't get that resolved within  
the  
13 Federal Government. He felt it was necessary to go  
to  
14 an outside independent organization, and that's why  
the  
15 National Academy was originally established. And  
16 because that's part of its charge, we continue to do  
17 that type of work even up to today.

18 Q. I notice that you mentioned in your resume  
an



19 issue, I think it was your resume or somewhere that  
20 there was reference to chloroform. Is that an issue  
21 where you were involved in this dispute resolution?

22 A. Chloroform was an issue. Chloroform is a  
23 substance, a chemical substance that is formed in  
24 drinking water when you chlorinate drinking water.

And

25 it's also used in a lot of other things. It used to

be

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30097

1 used, for example, in cough syrups. If you went down  
2 and got Vick's Formula 44, you found it had  
3 in it.

chloroform

4 The Environmental Protection Agency had a  
5 controversy between the division that does air and

the

6 water office that sets water standards as to how  
7 carcinogenic chloroform is, because it's formed in  
8 drinking water when it's chlorinated. And then the

air

9 office said, well, it's released during industrial  
10 processes, and we want to set one level, and the

other

11 group said, no, we want to use a different study and  
12 set another level.

13 So, the two agencies were having quite a  
14 discussion, quite a controversy, so they came to the  
15 National Academy and said this is the controversy

that

16 exists; would you tell us the right way to do this?

17 Q. And did you do that?

18 A. Yes.

19 Q. What did you do?

20 A. We resolved the controversy within the  
21 Environmental Protection Agency and they accepted the  
22 findings of the National Academy.

23 Q. Chloroform is thought to be an undesirable  
24 product or component of these things?

25 A. Yes.

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30098

1 Q. What was wrong with it?

2 A. Chloroform is formed when chlorine is added  
3 to drinking water. It's formed naturally. You put  
4 chlorine in drinking water to chlorinate it and a  
5 amount of that chloroform ends up -- of the chlorine  
6 ends up being chloroform.

7 Q. What's wrong with chloroform in the water?

8 A. In laboratory animal studies, the

9 produced cancer in laboratory animals and it's  
10 repeatedly produced cancer at different levels in  
11 laboratory animals. It required a lot to produce the  
12 cancer. And if you remember, I mentioned it used to

be

13 in a lot of common products. Vick's Formula 44 and  
14 cough syrups and so forth all contained chloroform,  
so  
15 all of us were taking it. One of the disputes was  
16 whether humans actually develop cancer from  
chloroform.

17 Q. So, in other words, the Federal Government,  
18 the two agencies were trying to decide how much  
19 chloroform would be appropriate?

20 A. How much chloroform would be considered  
21 appropriate based on a set of scientific studies,  
22 historical scientific study. So they asked us to do  
23 this independent review and go back and look at the  
24 whole history of chloroform, all that had been known  
25 about it for the last 50 years and then be able to

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30099

1 recommend to the federal agency what we thought were  
2 the best studies and how the federal agency ought to  
3 use those studies to come up with an answer that we  
4 thought was the most reasonable scientific answer.

5 Q. And ultimately was a standard adopted?

6 A. Yes, it was.

7 Q. You could have a certain standard of  
8 chloroform even though it was carcinogenic at certain  
9 levels?

10 A. It's an important issue. We went back and  
11 told the Environmental Protection Agency what we

12 thought the levels ought to be. That may not seem  
13 important, but nationwide we're talking about  
hundreds  
14 of billions of dollars. If we, for example, gave  
them  
15 one level that was too low, they would have to go  
into  
16 all the water treatment plants in all the United  
States  
17 and put in all new equipment, which would be billions  
18 and billions of dollars. That was part of the  
19 controversy. They wanted to make sure they had set  
the  
20 right level before they spent a lot of money.  
involved  
21 Q. And there was a public health reason  
22 there?  
of  
23 A. That's the end reason for doing that type  
to  
24 work is to understand, that was our primary purpose,  
25 be able to take the scientific information and

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30100

1 translate it into what the public health people  
should  
2 be doing as far as chloroform, what level could they  
3 set so the people are protected from getting cancer  
if  
4 they drink water their whole lifetime.  
5 Q. Now, you've been talking about one example,

call

6 but in all of your other examples or times when you  
7 were doing this dispute resolution, did it always  
8 require or generally require a review of what I'll  
9 a state-of-the-art?

a

10 A. It almost always did. There may have been  
11 few cases where they were focusing on a very narrow  
12 specific issue. But usually we would go back and  
13 at the full state-of-the-art and the history of the  
14 science, how it had developed.

look

15 Q. What do you mean state-of-the-art --

16 A. In --

17 Q. -- in this context?

18 A. If it's, well, we were talking about  
19 chloroform, the first studies on chloroform were  
20 published in about the mid 1920s, so we would go all  
21 the way back to the first studies and get those first  
22 studies and compare those with the studies published  
23 the '30s, '40s and '50s and what those studies meant  
24 that time and then compare those with the studies  
25 are being conducted today and what those show us.

in

at

that

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30101

1 Q. Is it fair to say that you were acting as a  
2 medical historian in that part of your work?

agencies

3 A. Yes, we were.

4 Q. Let's move to some other areas of your  
5 experience. Have you also worked for federal  
6 directly --

7 A. Yes, I have.

8 Q. -- as an employee? What was that?

9 A. I worked for the U.S. Department of  
10 Agriculture and the Bureau of Land Management.

11 Q. What did you do there?

12 A. I was actually working on two separate  
13 programs. The main program that I worked on was  
14 looking at the toxicity of chemicals on farm animals,  
15 animals that are of importance to commercial  
16 production.

continues

17 There had been a concern and there  
18 to be a concern over the years that as animals graze,  
19 for example, they will eat some plants that are  
20 poisonous and it will kill the animal. Or they may  
21 some plants that are poisonous and get cancer and  
22 the animal obviously can't be used for commercial  
23 slaughter.

eat

then

24 Q. Were you acting in the toxicology field  
25 there, pathology or something else?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

1           A.    It was toxicology and pathology.  We were  
2    doing autopsies on animals at that point.

3           Q.    Now, another area I wanted to ask you about  
4    was your work in private industry.  Have you worked  
5    private companies before?

6           A.    Yes, I have.

7           Q.    Tell the jury what private companies you've  
8    worked for.

9           A.    Well, I've worked for, I worked for Ciba  
10   Geigy, G-E-I-G-Y, Corporation.  If you've taken any  
11   pharmaceuticals over the years, go to the drug store,  
12   you've probably noticed that the pills say Ciba on  
13   them.  A lot of them do.  When I was working for Ciba  
14   Geigy, it was the third largest chemical company in  
15   world producing pharmaceuticals and pesticides, and I  
16   was a senior scientist running the program at Ciba  
17   Geigy Corporation.

18          Q.    What kind of work did you do?

19          A.    Laboratory animal work and human work.  We  
20   were looking at the impacts of pesticides in the  
21   environment on laboratory animals.  My lab had rats  
22   mice.  We did primate studies as well on monkeys.  At  
23   different laboratory we even did large animal studies  
24   in goats and cows.  Then a couple of local hospitals  
25   did clinical studies.

Geigy

1 I also worked on pharmaceuticals. Ciba  
2 is a major maker of pharmaceuticals. I used my  
3 training in developing anti-tumor agents to work with  
4 them and continuing to develop drugs for treating  
5 various diseases, cancer, heart disease and some  
6 others.

career,

7 Q. Have you also, in the course of your  
8 done private consulting for private industries?

9 A. Yes, I have. Ever since I finished school,  
10 in fact, even before I finished my doctor's degree, I  
11 did some consulting for private companies. I've  
12 continued over the years to do private consulting.

In

13 addition, I also worked at Borriston Research  
14 Laboratories, which was a contract, private contract  
15 laboratory.

16 Q. The work you've been asked to do in this  
17 case, is this part of the private consulting that you  
18 would do?

19 A. Yes, it is.

20 Q. And you've done this private consulting for  
21 some other companies from time to time?

22 A. Yes.

23 Q. Who are some of the companies you've worked  
24 for?

25 A. There's a lot of companies over the years,



30104

of 1 companies like Dupont, Dow Chemical, Monsanto, a lot  
really 2 federal agencies, state and local agencies. It  
federal 3 doesn't matter to me whether it's a company or  
4 agency or somebody that needs some kind of scientific  
5 analysis. I'm basically paid the same way.

6 Q. Most of this work has been litigation or  
7 nonlitigation related?

8 A. Most of it has been nonlitigation.

got 9 Q. Let me change to another area. And I've  
10 maybe one more short area.

11 THE COURT: Go ahead, finish it up.

12 BY MR. REID:

13 Q. I want to talk about private laboratories.

14 MR. REID: By the way, that's not a new  
15 letter. I left the "O" off of toxicology.

16 Potato.

17 Q. I want to talk about private laboratories,  
18 the kind that are run by perhaps universities. Those  
19 kinds of laboratories, you've had experience in those  
20 in the course of your career?

21 A. Yes, I have.

me 22 Q. Let me ask you in general before you give  
23 your experience, first of all, what kind of work do

24 these, what I'll call private laboratories do  
25 generally?

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30105

1 A. The private laboratories act as a third  
2 party, independent organization that conducts  
research,  
3 laboratory research, clinical research, various types  
4 of research and are paid to conduct the research,  
5 either a contract or a grant.

6 Q. Now, why would a company not just do that  
7 kind of work in their own laboratories as opposed to  
8 using a private laboratory?

9 A. Well, there are several reasons that a  
10 company would go outside of their companies. Most  
11 large companies have laboratories themselves within  
12 their company. But they may lack some of the  
13 expertise, they may not have people that really  
14 understand how to do a particular study in their own  
15 laboratories, so they would go out and contract with  
16 another laboratory that does have that expertise or  
the  
17 ability to conduct that study that they can't  
conduct.

18 Frankly, one of the other reasons is having  
19 worked with federal agencies on registering  
chemicals,  
20 as you realize, these companies are in business to  
21 register chemicals and have them on the market.

they

22                   So, the studies they conduct are so that  
23           can register these chemicals. And they submit these  
24           studies for approval for the chemical. The federal  
25           agencies usually look better on a study done by an

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30106

possibly,

1           independent laboratory as being less biased,  
2           than a study done within a company's own laboratory  
3           that has a vested interest on the outcome of that  
4           study.

outside

idea

5                   So, when really important studies for a  
6           registration are done, companies will often go  
7           of the company and conduct that research where the  
8           will be accepted better.

laboratories

9           Q.    Now, tell the jury which private  
10          you've worked with or worked for during your career.

11          A.    I worked for Stanford Research Institute.  
12          That used to be part of Stanford University until it  
13          was separated many years ago.

14          Q.    What did you do there?

15          A.    I was a senior scientist and directed a  
16          program there on laboratory animal studies. I both  
17          reviewed scientific information, developed studies,  
18          wrote these protocols or these experimental designs

19 that we're talking about, and then I went into the  
20 laboratory and actually ran the studies myself.

21 Q. Have you worked at any other private  
22 laboratories?

23 A. After Stanford Research Institute. I  
worked

24 at MIT Research Institute. Again, an organization  
that

25 was originally affiliated with MIT University and is

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30107

of 1 now an independent laboratory, doing the same types  
2 studies.

3 Q. Finally, you mentioned Borrison  
Laboratory,

4 was that ever associated with a university?

5 A. No, never directly associated with a  
6 university. It actually, we had ties with local  
7 universities for particular types of studies, but it  
8 didn't start at a university, it was an independent  
9 laboratory that did contract research.

10 Q. And while you were at Borrison Laboratory,  
11 did you run a series of tests with beagles to attempt  
12 to replicate or create lung cancer with dogs through  
13 the inhalation of smoke?

14 A. Yes, we did.

15 Q. And were you successful?

16 A. No,  
17 Q. And who paid for that research?  
18 A. The National Cancer Institute.  
19 Q. Federal Government?  
20 A. Yes, Federal Government.  
21 Q. In all the various processes and areas that  
22 you've worked in, has it always been part of your  
23 a component of your work to do research into the  
24 scientific literature?  
25 A. Yes, it is. Much of what I have done over

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30108

1 the years to try to understand the development of  
2 specific aspects of a disease, I specialize in the  
3 mechanisms of disease. And so to analyze that, often  
4 we have to go back to the literature and understand  
5 history of when research was done and why it was done  
6 and whether there was controversy about the research  
7 and how those controversies were resolved over the  
8 years.

9 MR. REID: Your Honor, that would be a  
10 place to stop.

11 THE COURT: Okay. We'll do that.

12 You all put in a good day. So let's come  
13 back tomorrow, 9:15. We'll get underway about 9:30.

14 You get here at 9:15, the rest of us will endeavor to  
15 mosey in around 9:30, I'm sure.

16 (The jurors exited the courtroom.)

17 THE COURT: All right. A word of caution  
18 that over the evening. You must not discuss your  
19 testimony with anybody including the lawyers from  
20 either side. You are on the witness stand and under  
21 oath. And you be here somewhere around 9:15, 9:30.

22 All right. Any other things?

23 MR. HEIM: Your Honor, I wanted to raise

24 thing. I don't think we need the witness.

25 (Witness exited the courtroom.)

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30109

1 MR. HEIM: Just a couple of things, Your  
2 Honor, very, very briefly, one is tomorrow we will  
3 file, as we promised the Court, a response to the  
4 plaintiffs' motion to reconsider with respect to  
5 certain of the diseases. So we will have that to  
6 Honor tomorrow.

7 The other thing that I wanted to mention,  
8 because I thought I might forget it tomorrow, is that  
9 we've had pending, and I know Your Honor knows a  
10 with regard to the youth marketing and minority  
11 marketing issues.

Your

motion

12 I certainly don't know what Your Honor is  
13 going to do with that motion or how you might rule  
with  
14 respect to it or what relief, if Your Honor decides  
to  
15 give some relief, that you think might be  
appropriate,  
16 but on the marketing side of things, if Your Honor is  
17 not going to grant any relief with respect to that,  
and  
18 I know Your Honor knows the arguments we've made on  
19 relevance and common issues and preemption, but if  
Your  
20 Honor decides not to grant any relief with respect to  
21 it, we're going to have to put on a bunch of  
marketing  
22 witnesses as Your Honor would expect.

23 THE COURT: A bunch?

24 MR. HEIM: I mean, all of us would have to  
25 put on witnesses. And the case I think after this  
next

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30110

1 holiday break is going to move pretty fast. So all I  
2 wanted to do was alert Your Honor to that issue and  
if  
3 the Court wanted any further short oral conversation  
on  
4 that subject, you know, I'm sure both sides would be  
5 prepared to present it to the court. But that need  
for  
6 us to start thinking about that is coming up and I

just

7 thought I would alert Your Honor to that.

8 THE COURT: Okay. Do you have anything to  
9 add or not add?

I

10 MS. ROSENBLATT: No, we would just say that  
11 think it should be denied or deferred.

12 THE COURT: Not argue the merits, he says  
13 want further arguments.

need

14 MS. ROSENBLATT: I don't think there's a  
15 for further argument.

16 I did want to add, Your Honor, one thing I  
17 did forget to say with regard to this particular  
18 witness, and I know Your Honor is reviewing those  
19 materials. One of the areas I think absolutely is  
20 outside the province of this witness or any other  
21 witness, but here it's very direct, Your Honor will  
22 instruct the jury and I have the standard

instructions

23 on causation, this witness purported to explain what  
24 necessary to prove cause, mechanisms and so forth.

is

25 THE COURT: Which cause are you talking

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED

30111

1 about, scientific field or within the legal field?

2 MS. ROSENBLATT: Cause is cause. And

whether



look

3 something causes something, there is no --

4 THE COURT: We can take that up.

5 MS. ROSENBLATT: I just wanted to --

6 THE COURT: We'll see where we go with it.

7 Show me what you're talking about and we'll take a

8 at it. There may be a different type of cause other

9 than, we'll say, the legal cause.

10 Now, cause factors as far as jury

11 instructions are concerned mean one thing, but in the

12 scientific world a cause factor may mean something

13 else.

14 MS. ROSENBLATT: Well, I'm not aware of any

15 cases that say that. The standard instructions don't

16 say that. Once you get into an area of a peculiar

17 situation --

18 THE COURT: Let's put it this way, running

19 through a red light is a risk factor, it can also be

a

20 cause.

21 MR. ROSENBLATT: Right.

22 THE COURT: Science talks about something

23 different. We'll see what the difference is.

24 (Court was adjourned at 5:00 p.m.)

25

TAYLOR, JONOVIC, WHITE & GENDRON  
COPYRIGHT 1999V-CALLHRIGHTSGRESERVED